



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a Notice to End Tenancy for unpaid rent and more time to make such an application. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard with respect to relevant matters. The tenants confirmed service of the landlord's application and evidence. The landlord confirmed service of the tenant's original application and subsequent evidence package.

The tenants filed an amended application on September 10, 2010 with the Residential Tenancy Branch to include a monetary claim against the landlord in the amount of \$1,500.00. The landlord stated he had not been served with the amended application. The tenants were asked to provide proof of service of the amended application upon the landlord. The tenants claim they served the amended application and an evidence package upon the landlord via registered mail sent September 24, 2010. The landlord confirmed receiving the evidence which indicates the tenants are seeking compensation of more than \$7,400.00. I found the tenants did not prove they served the landlord with their amended application or evidence within the time limits required by the Act and Rules of Procedure. The tenants' amended application and late evidence was not accepted or heard during this proceeding. The tenants are at liberty to make another application with respect to monetary claims against the landlord.

The hearing proceeded with respect to the Notices to End Tenancy for Unpaid Rent.

The owner of the property was a witness for this proceeding and the owner was excluded from the proceeding until such time he was called to testify.

Issues(s) to be Decided

1. Is there a basis to cancel the Notices to End Tenancy issued to the tenants?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid rent?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

I heard undisputed evidence as follows. The tenancy for the basement unit commenced December 1, 2009. The tenants paid a \$450.00 security deposit and were required to pay rent of \$950.00 per month. Up until the rental month of June 2010 the Ministry was sending rent payments directly to the landlord's former agent. Effective July 2010 the tenants instructed the Ministry to stop paying rent directly to the landlord. In July 2010 the current property manager took over management of the property (herein referred to as the landlord).

I also heard undisputed evidence that in April 2010 the Fire Marshal inspected the rental unit and declared that one of the rooms in the basement could not be used as a bedroom. The tenants did not pay rent on July 1, 2010. On July 22, 2010 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$950.00 was unpaid as of July 1, 2010. The tenants did not dispute that Notice and paid \$600.00 on July 28, 2010. On August 5, 2010 the landlord personally served another 10 Day Notice to End Tenancy for Unpaid Rent indicating rent totalling 2,050.00 was outstanding for the months of June, July and August 2010. The tenants disputed the August 5 Notice claiming they had an agreement with the owner to disregard the Notice as they had done work to the property.

During the hearing the landlord submitted that he was informed by the former property manager that \$800.00 was outstanding for June's rent but the landlord also stated that there appears to be some evidence that the Ministry has recorded a rental payment to the former property manager for the month of June 2010. Other than the \$600.00 payment on July 28, 2010 no other rent payments have been received from the tenants since Notices to End Tenancy were served upon the tenants.

The landlord submitted that he was aware of the owner's agreement that the tenants could use one bedroom located on the upper floor of the house for use as a bedroom by the tenant's son after the fire marshal prohibited use of one of the bedrooms in the basement level. However, the landlord submitted that the tenants have been occupying the entire upper floor since July 2010. As a result the tenants are causing the landlord to suffer a loss of revenue for the upper unit.

During the hearing the tenants submitted that in April 2010 the owner agreed to reduce the rent to \$700.00 per month for loss of use of one of the bedrooms in the basement unit. The tenant explained that they did not pay \$100.00 for July's rent or subsequent month's rent to get the landlord's attention with respect to the condition of the property. The tenants acknowledge that they have used the bedroom in the upper level of the house to accommodate the tenant's son and claimed that they did not start using the other areas of the upper level until late August 2010 and that was with the owner's permission.

The tenants also submitted that they did work to remove garbage from the property and that that the male tenant was assaulted by the former upstairs tenant on July 6, 2010. The tenants claim that as a result of the assault their unit was damaged and is uninhabitable. The tenants submitted that the owner gave the tenants permission to occupy the upper level of the house after the former tenant vacated that unit.

The landlord refuted the tenants' testimony by stating that he had served the tenants at the upper level of the house in July 2010 and the tenants' submission that they have been living upstairs since late August with the owner's permission is false. The landlord testified that he is unaware of any agreement by the owner that would permit the tenant's to reduce rent payable. The landlord was unaware of any agreement to permit the tenants to use any part of the upper level except the bedroom.

The owner was called as a witness and I asked the owner questions concerning the conflicting testimony. Upon enquiry, the owner testified that he had not agreed to a rent reduction for loss of a bedroom in the basement. Rather, the owner agreed the tenants could use one of bedrooms upstairs. The owner testified that except for the use of one bedroom, the owner did not give the tenants authority to move upstairs.

I noted that the former property manager's ledger indicated that rent changed from \$950.00 to \$900.00 per month starting April 2010. None of the parties at the hearing could provide an explanation as to the change reflected on the former property manager's ledger.

During the hearing the tenants requested and the landlord consented to an Order of Possession effective October 15, 2010. The landlord requested unpaid rent and loss of rent for the months of June 2010 through October 2010.

Documentary evidence accepted and considered for this hearing included: the tenancy agreement; Notices to End Tenancy issued in July, August and September 2010; Ministry benefit statements up to the benefit month of June 2010; the Fire Marshal's orders; a ledger account from the former property manager; and, the receipt issued to the tenant for the July 28, 2010 payment.

Analysis

Under section 26 of the Act a tenant must pay rent when due, even if the landlord has not complied with the Act, regulations or tenancy agreement, unless the tenant has the legal right to withhold rent. In this case the tenant presented disputed verbal testimony that the tenant had the owner's consent for a rent reduction. I find the disputed testimony to be insufficient to conclude the tenants had the right to reduce rent payable. Even if the tenants were authorized to reduce rent payable, it is undisputed that the tenants withheld the amount of rent they assert was payable.

Although the tenants submitted in their application that the owner told the tenants to disregard the Notice to End Tenancy this position was not brought forward during the hearing. Therefore, I considered that submission abandoned by the tenants.

Upon consideration of the evidence presented to me, I am satisfied the landlord has served three Notices to End Tenancy upon the tenants and the tenants have failed to show payment of the outstanding rent or that they had a legal right to reduce or withhold rent. Accordingly, I find no basis to cancel the Notices to End Tenancy and I uphold the Notices. In recognition of the agreement reached during the hearing, I provide the landlord with an Order of Possession effective at 1:00 p.m. on October 15, 2010 to serve upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

I was presented with a written tenancy agreement and Ministry benefit statements showing rent payments of \$950.00 per month up to and including the benefit month of June 2010. I reject the tenant's submission that rent was reduced to \$700.00 per month after the Fire Marshal's inspection as the Ministry rent payments remained at \$950.00. I do not rely upon the former property manager's ledger statement in determining rent was outstanding for June 2010 as Ministry statements show otherwise. Nor do I rely upon the former property manager's ledger that rent had been reduced to \$900.00 per

month. Therefore, I find the rent payable remained at \$950.00 per month and the tenants were provided the use of the upstairs bedroom in exchange for loss of use of the basement bedroom.

In recognition of the Order of Possession granted to the landlord with an effective date of October 15, 2010 I award the landlord unpaid rent and loss of rent at the rate of \$950.00 per month up to October 15, 2010. I make no award with respect to loss of revenue for the upper level as such a claim was not part of the landlord's application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of rent owed the landlord and I award the filing fee to the landlord. Should the landlord incur damages or loss after October 15, 2010 the landlord is at liberty to make another application. In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – July 2010 (\$950.00 - \$600.00 payment)	\$ 350.00
Unpaid rent – August 2010	950.00
Loss of rent – September 2010	950.00
Loss of rent – October 1 – 15, 2010	475.00
Less: retention of security deposit	(450.00)
Plus: filing fee	<u>50.00</u>
Monetary Order for landlord	\$ 2,325.00

The Monetary Order must be served upon the tenants and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective October 15, 2010 to serve upon the tenants. The landlord has been authorized to retain the tenants' security

deposit and has been provided a Monetary Order for the balance of \$2,325.00 to serve upon the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 1, 2010.

Dispute Resolution Officer