



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, OPB, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants had applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for Unpaid Rent and breach of an agreement. The landlord applied for a Monetary Order for unpaid rent and utilities, damage to the rental unit, damage or loss under the Act, regulations or tenancy agreement. The landlord applied for authority to retain the security deposit and recover the filing fee paid for this application.

The tenants did not appear at the hearing and the landlord's agent confirmed the tenants had served the tenants' Application for Dispute Resolution upon the landlord. As the landlord appeared and was prepared to proceed with the tenants' application, in the absence of the tenants, I dismissed the tenants' application without leave to reapply.

The landlord's agent testified that each of the tenants were served with the landlord's Application for Dispute Resolution and notice of hearing in person at the rental unit on October 26, 2010 in the presence of a witness. I was satisfied the tenants were sufficiently served with the landlord's application and I proceeded to hear from the landlord without the tenants present.

The tenants had identified two landlords in making their application. The landlord's application and tenancy agreement indicates only one landlord. The person appearing on behalf of the landlord is the landlord's agent. This decision and the Orders that accompany it name only the landlord appearing on the tenancy agreement and landlord's Application for Dispute Resolution.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to a Monetary Order for damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

I was provided the following testimony by the landlord's agent. The tenants moved in October 21, 2009. The parties agreed upon a monthly rent of \$800.00 plus \$60.00 for utilities. The tenants paid a \$400.00 security deposit. The landlord requested the tenants pay pro-rated rent for the period of October 21 – 31, 2009 but the tenants did not pay it. Rent payments began coming from the Ministry for \$800.00 per month. The landlord requested the tenants pay the utility payment of \$60.00 on several occasions but the tenants did not pay. On October 14, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) and posted it on the rental unit door on October 14, 2010 in the presence of a witness. The Notice does not specify an effective vacancy date and indicates the tenants owed \$230.00 in rent as of November 1, 2009 and \$60.00 for utilities as of September 1, 2010. The tenants filed to dispute the Notice on October 22, 2010.

The landlord's testimony appeared to indicate that the landlord expected the tenants to pay pro-rated rent for October 21 – 31, 2009 and then full monthly rent starting on November 1, 2009. However, the tenancy agreement provides that rent is payable on the 20th day of every month.

The landlord further submitted that the tenants have damaged the rental unit and the tenants have changed the locks to the rental unit. The male tenant has been abusive and threatening. The landlord claims rent was not paid for November 2010.

The landlord is seeking compensation for the following amounts:

Unpaid rent – October 21 – 31, 2009	\$ 286.00
Unpaid utilities – September and October 2010	\$ 120.00
Damage to rental unit	\$ 200.00
Loss of rent – November 2010	\$ 800.00

Provided as evidence by the landlord was a copy of the 10 Day Notice, a payment stub for \$400.00 from the Ministry for the male tenant's portion of rent, and the tenancy agreement.

Analysis

The landlord did not provide evidence that a 1 Month Notice to End Tenancy for Cause was issued; therefore, I find the conduct and behaviour of the tenants is not relevant to this decision. Rather, this decision is based upon the Notice to End Tenancy for Unpaid Rent and Utilities and whether the landlord has established that this tenancy should end for failure to pay rent or utilities.

Based upon the tenancy agreement provided to me I accept that the tenants were required to pay the landlord \$60.00 per month for utilities in addition to the monthly rent of \$800.00. I accept the landlord's testimony that the Ministry paid \$800.00 per month and that the tenants did not pay the utilities as required under the tenancy agreement.

I am satisfied the landlord served a 10 Day Notice upon the tenants since the tenants disputed the Notice on October 22, 2010. The tenants disputed the Notice on the basis the Ministry has paid rent to the landlord; however, the tenants did not provide any evidence to support that position. Nor did the tenants provide a copy of the 10 Day Notice served upon them or any rebuttal to the requirement to pay \$60.00 per month for utilities. Accordingly, I find the tenants have failed to show they did not owe utilities or

that they paid the utilities owed to the landlord. In light of these findings, I conclude that the landlord has sufficient grounds to end the tenancy for unpaid rent or utilities.

In light of the above I grant the landlord's request for an Order of Possession for unpaid rent or utilities. I provide an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession must be served upon the tenants and may be enforced in The Supreme Court of British Columbia as an Order of that court.

With respect to the landlord's monetary claims, I find as follows. The tenancy agreement provides that rent is due on the 20th day of every month thus payment of \$800.00 was due on the 20th and would be for the period of the 20th to the 19th day of the following month. I do not find sufficient evidence to conclude the parties legally changed the terms of the tenancy agreement to require payment was due on the 1st day of every month. Accordingly, I do not find the landlord entitled to rent from October 21 - 31, 2009 in addition to the monthly rent payment of \$800.00. Therefore, I dismiss the landlord's claim for unpaid rent of \$286.00.

I am satisfied that the tenants did not pay rent as of October 20, 2010 and I award the landlord \$800.00 for loss of rent for October 20 – November 19, 2010. I also find the landlord entitled to receive unpaid utilities for the \$120.00 claimed by the landlord.

I do not award the landlord damage to the rental unit as the tenants have not yet vacated and the landlord has not ascertained the value of the damage. Therefore, I find a claim for damage to be pre-mature and I dismiss that portion of the landlord's claim with leave to reapply. The landlord is also at liberty to make a subsequent application should the landlord suffer a subsequent loss of rent as a result of the tenant's actions.

I award the filing fee to the landlord and I authorize the landlord to retain the security deposit. I provide the landlord with a Monetary Order calculated as follows:

Unpaid due October 20, 2010	\$ 800.00
Unpaid utilities	120.00
Filing fee	50.00
Security deposit	<u>(400.00)</u>
Monetary Order for landlord	\$ 570.00

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended for unpaid rent or utilities and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$570.00 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: November 19, 2010.

Dispute Resolution Officer