



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts. The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated October 21, 2010, for compensation for emergency repairs, for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and pet damage deposit and for an Order that the Landlords make emergency repairs.

At the beginning of the hearing, the Tenant (M.D.) requested an adjournment as she claimed that one of her co-Tenants (J.R.) had to have surgery on November 20, 2010 and was still in the hospital. The Landlord (D.D.) objected to an adjournment as he claimed the Tenants had not paid rent for 3 months and he would incur further losses if this matter was further delayed. The Tenant (M.D.) admitted that she and her co-Tenants had not paid rent for 3 months, that they were not authorized under the Act to withhold their rent and that their shelter funding had been suspended by the Ministry. I find that there is no evidence that the Tenants will be prejudiced by proceeding with the hearing in the absence of only one of them and as a result, I dismissed the Tenants' application for an adjournment.

I find that the Landlords served their application and Notice of Hearing on the Tenants in person on October 28, 2010 and that the Tenants served the Landlords with their application and Notice of Hearing by registered mail on or about October 27, 2010.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?
4. Are the Tenants entitled to compensation and if so, how much?
5. Are emergency repairs or other repairs required?



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Background and Evidence

This fixed term tenancy started on July 15, 2010 and expires on June 30, 2011. Rent is \$1,700.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$850.00 and a pet damage deposit of \$100.00 at the beginning of the tenancy.

The Landlord (D.D.) said the Tenants had rent arrears of \$360.00 for August 2010 and did not pay rent for September, October and November 2010 which the Tenants admit. Consequently, the Landlord said he served the Tenants in person on October 21, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated October 21, 2010. The Notice stated that the Tenants had rent arrears of \$3,760.00 as of August 1, 2010 however the Landlord claimed that he made an error and that it should have stated October 1, 2010. The Tenant (M.D.) also said that she was aware that the Notice stated August 1, 2010 in error because rent arrears of \$3,760.00 had not accrued until October 1, 2010. The Tenants have made no payment on the arrears since they were served with the 10 Day Notice dated October 21, 2010.

Analysis

The Tenants argued that the 10 Day Notice to End Tenancy dated October 21, 2010 was defective because it stated in error that the amount of \$3,760.00 was due on August 1, 2010 when that amount was due on October 1, 2010. The Tenants admitted that there were rent arrears of \$360.00 on August 1, 2010 and that the amount of \$3,760.00 had accrued by October 1, 2010. Section 68 of the Act says that "if a notice to end tenancy does not comply with s. 52 of the Act, the director may amend the notice if satisfied that the person receiving the Notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice." I find that the Tenants were aware of the obvious error made by the Landlords on the 10 Day Notice to End Tenancy. As there were rent arrears of \$360.00 due on August 1, 2010 and that still remain unpaid, I find that it makes no difference to the Tenants' position if the date is now changed or not. For all of these reasons, I find that it is reasonable to amend the 10 Day Notice to show that the rent arrears of \$3,760.00 were due on October 1, 2010.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. I find that the Tenants were served in person on October 21, 2010 with the 10 Day



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Notice to End Tenancy for Unpaid Rent dated October 21, 2010. Consequently, the Tenants would have had to pay the arrears stated on the Notice or apply to dispute that amount **no later than October 26, 2010**. However, the Tenants did not make their application to dispute the Notice until October 27, 2010 and as a result their application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenants did not apply for more time to apply to cancel the Notice under s. 66(1) of the Act.

Even if the Tenants had applied to cancel the Notice within the 5 day time limit set out under s. 46(4) of the Act or applied for more time to apply under s. 66(1), the undisputed evidence was that the Tenants have not paid the overdue rent within 5 days of receiving the 10 Day Notice dated October 21, 2010 and were not authorized under the Act to withhold it. As a result, the Tenants' application would also have been dismissed for that reason. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenants.

Although the amount of the rent arrears is \$5,460.00 the Landlord limited the amount of his claim to \$5,000.00 and I award him that amount as well as the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet damage deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:

Rent arrears:	\$5,000.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$5,050.00
Less: Security Deposit:	(\$850.00)
Pet Damage Deposit:	<u>(\$100.00)</u>
BALANCE OWING:	\$4,100.00

At the beginning of the hearing, the Tenant (M.D.) also claimed that in previous proceedings between these parties heard on October 21, 2010, the Landlords were ordered to hire an electrician to certify if the electrical system in the rental unit was safe and up to Code within 30 days. The Tenant said the Landlords did not comply with that Order which the Landlords admit. The Landlords said they did not comply with the Order because they believed they did not have to if the tenancy would be ending.

Given that an Order for repairs has already been made and given further that the tenancy will be ending, the Tenants' application for emergency repairs is dismissed without leave to reapply. The Tenants may instead bring an application for compensation due to the Landlords' failure to comply with an Order of the Residential Tenancy Branch. The Tenant (M.D.) also said she wished to withdraw her application



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for compensation for cleaning expenses, for spoiled food and for a damaged vacuum cleaner and I order that she may reapply for this compensation.

Conclusion

The Tenants' application to cancel a 10 Day Notice dated October 21, 2010, for an order for emergency repairs and for the return of a security deposit and pet damage deposit is dismissed without leave to reapply. The Tenants' application for compensation is dismissed with leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$4,100.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 23, 2010.

Dispute Resolution Officer