



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNDC, RPP, RR, FF

Introduction

This conference call hearing was convened in response to the tenants' application for a cancellation of a Notice to End Tenancy; a Monetary Order for compensation for damage or loss under the Act; the return of the tenant's personal property; to allow the tenant to reduce rent; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. The landlord was represented by his lawyer. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Are the tenants entitled to a cancellation of the 10 Day Notice to End Tenancy?

Are the tenants entitled to a Monetary Order, and for what amount?

Are the tenants entitled to the return of personal property?

Are the tenants entitled to a reduction of rent?

Background and Evidence

The rental unit consists of the upper floor of a detached home located in Kamloops.

Pursuant to a verbal agreement, the month to month tenancy started at the end of June 2010 at a rate of \$1200.00. The tenants did not pay a security deposit.

The landlord testified that the tenancy agreement provided that the tenants would pay \$100.00 per month for shared utilities. The landlord's lawyer submitted that the tenants owe the following:

- Unpaid rent for November 2010: \$ 700.00
- Unpaid utilities for November 2010: \$ 100.00
- Unpaid rent for December 2010: \$1200.00
- Unpaid utilities for December 2010: \$ 100.00
- Unpaid rent for January 2011: \$1200.00
- Unpaid utilities for January 2011: \$ 100.00
- Total claimed: \$3400.00

The tenants provided a written submission in which they state that the tenancy has been fraught with problems. Some of these problems include, but are not limited to: the tenants being threatened by the landlord's excessive drinking and constant state of intoxication; the landlord has displayed bursts of anger and the tenants have had to call the police; the landlord has locked the tenants out of the garage where personal items are stored; the landlord broke the tenants' child's bed frame by throwing it out onto the front yard; the landlord cut the power off the rental unit; the landlord threatened to punch the tenants' son; the landlord has been withholding and tampering with the tenants' mail.

The tenants testified that they do not dispute owing the landlord for unpaid rent, but dispute the amount because the agreement of \$1200.00 for rent included utilities. Tenant V.B. stated that he stopped paying the rent because of the disturbances as mentioned above. V.B. stated that he will pay the rent if the landlord's behaviour changes.

The tenants claim compensation of \$279.00 to replace the bed frame, recovery of the filing fees, and for that amount to be deducted from the amount owed for unpaid rent.

The tenants also request that the landlord allows them access to their belongings in the garage to store them in a safe facility.

The landlord stated that he did move the bed frame into the front yard, that it was a wooden frame and did not appear broken.

Lastly, the landlord's lawyer submitted that the tenants did not dispute owing rent, and that although the tenants do not like the landlord, his client is entitled to have the rent paid.

Analysis

Concerning how much the tenants owe for unpaid rent: the undisputed evidence is that the tenancy was verbal, that the rent was \$1200.00 and that the tenants are \$3100.00 in arrears. Regarding the utilities, neither party could provide material evidence to support their claim: therefore I am unable to find on a balance of probabilities that any amount is owed for utilities. Accordingly, I find that the landlord is entitled to unpaid rent totalling \$3100.00.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. The tenants did not dispute owing the landlord for unpaid rent. After reviewing the landlord's 10 Day Notice to End Tenancy, I find that the notice to end the tenancy is valid. In their application, the tenants state that although dated December 14th, 2010, they did not receive the notice until December 20th. Since the effective date of December 31st still provides 10 days by which the tenants must move out, I find that the effective date on the notice is valid.

Section 26(3) of the *Act* specifies in part that a landlord must not prevent or interfere with the tenants' access to their personal property.

I accept the tenants' evidence that access to the garage was restricted. Therefore I order the landlord to comply with the Act and to provide the tenants access to their personal property.

The landlord bears a number of obligations towards the tenants. Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to; reasonable privacy, freedom from unreasonable disturbance, and use of common areas for reasonable and lawful purposes, free from significant interference.

I find sufficient evidence in this matter to prove that the tenants were significantly impacted by the landlord's actions. I grant the tenants a reduction in rent for loss of quiet enjoyment in the equivalent of a month's rent for \$1200.00.

Concerning the broken bed frame, the landlord agreed that he moved the wooden frame and left it onto the front yard. In the absence of receipts I award the tenants \$125.00.

Conclusion

The landlord's 10 Day Notice to End Tenancy is valid and the tenants' application for a cancellation of a Notice to End Tenancy is dismissed. The landlord is entitled to \$3100.00: at the hearing, the landlord did not make an oral request for an Order of Possession, nor did he make an application for dispute resolution. If the landlord wishes to pursue his claim, he may do so by making his own application for dispute resolution.

Notwithstanding, both parties must comply with the Act: the tenants must pay the rent and the landlord must provide access to the tenants' belongings, and provide the tenants with quiet enjoyment. It will be up to the parties to decide how to resolve the tenancy.

The tenants have established a claim of \$1325.00. Since they were partially successful, I award the tenants a portion of the filing fee in the amount of \$25.00.

Pursuant to Section 67 of the Act, I grant the tenants a Monetary Order totalling \$1350.00.

If necessary, This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: January 19, 2011.

Residential Tenancy Branch