



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and utilities, compensation for damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a Notice issued ending tenancy for unpaid rent and to recover filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 10 Day Notice ending tenancy for unpaid rent issued on December 17, 2010, be cancelled?

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

May the landlord retain the deposit paid by the tenants?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced May 1, 2010, at which time rent was \$1,000.00 per month and a deposit in the sum of \$500.00 was paid. A copy of the tenancy agreement was submitted as evidence, which indicated a deposit in the sum of \$900.00 was paid. The tenants acknowledged that only \$500.00 was paid toward the deposit owed. Both parties acknowledged rent was due on the first day of each month.

The landlord supplied a copy of an agreement signed by the parties on September 28, 2010, in which the tenants agreed to pay rent in the sum of \$1,800.00 per month, commencing November 1, 2010. The agreement also indicated the tenants would pay an additional \$200.00 in November, to satisfy previously unpaid rent owed by another tenant. The landlord stated the previous tenant had been a co-tenant with the female applicant/respondent. The female tenant testified that the rent owed from a previous agreement was not part of a co-tenancy.

The landlord stated that on December 17, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 23, 2010, was served by personal delivery. The tenants applied to dispute the Notice on December 22, 2010.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,800.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The parties acknowledged that the tenants had not paid \$100.00 rent owed in November and had not paid December, 2010, rent owed or January, 2011, rent in the sum of \$1,800.00 per month each. The landlord is also claiming an additional \$200.00 owed for past rent arrears, that formed part of the agreement signed between the parties on September 28, 2010.

The tenants stated that the landlord had agreed to allow a delay in the December rent owed, as the male tenant had lost his job. On December 16, 2010, the tenants attempted to pay \$1,000.00 of rent owed; the landlord refused the payment. On the next day the tenants were served with Notice ending the tenancy. The tenants believed the landlord had given them permission to pay the rent late but confirmed that they have not paid December or January rent owed.

During the hearing the tenants stated they would vacate the rental unit on January 22, 2010. The parties were then told I would be finding that the tenancy should end, based on the failure of the tenants to pay rent. The landlord agreed to an Order of possession effective January 22, 2011, at 1 p.m.

The landlord is claiming cable bills in the sum of \$90.96 from November 28 to December 19, 2010 and from December 20, 2010, to January 19, 2011 in the sum of \$101.81. The tenants acknowledged that they had received copies of the bills and that they were responsible for these costs. However, the landlord confirmed that she had reduced the level of cable service to the tenants; the bill is in the landlord's name and the tenants make payments to her.

The tenants submitted that the amount owed for cable from December 28, 2010, will be adjusted by the cable company, due to the reduction in services made on the date the last bill was issued; December 28, 2010. The landlord did not provide the tenants with written notice of any decrease in this service provided as part of the tenancy, but paid for by the tenants.

The landlord requested hydro bill costs, but this claim was not included on the Application, nor was the Application amended to include a claim for hydro. The tenants acknowledged receipt of the hydro bill.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on December 23, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

The tenants applied to dispute the Notice within 5 days of receipt of the Notice. The tenants have not paid rent owed for December, 2010, or January, 2011.

As the tenants have not paid rent owed, I find, despite any verbal agreement made to delay rent payments, that the Notice issued on December 17, 2010, indicated that the landlord wished to have the rent paid. The tenants did not pay December, 2010, rent owed within 5 days and they did not pay January, 2011, rent owed. Therefore, I find that the Notice ending tenancy issued on December 17, 2010, is valid and that the landlord is entitled to an Order of possession effective January 22, 2011, at 1 p.m.

As the parties disputed the amount owed in November and the Notice issued did not include any rent arrears in prior to December, I find, on the balance of probabilities, that the tenants owed \$100.00 for November rent, an amount confirmed by the tenants. I find that the landlord is also entitled to unpaid rent for December, 2010, and January 2011, in the sum of \$3,600.00.

The tenants acknowledged responsibility for payment of cable services. The landlord has the burden of proving the amount owed and acknowledged reducing the cable

services after December 28, 2010, without the tenant's permission or any notice to the tenants. Therefore, I find that the landlord is entitled to compensation for the cable bill from November 28 to December 19, 2010, only, in the sum of \$90.96; in the absence of evidence indicating the amount owed after the reduction in service, the balance of the landlord's claim for unpaid cable is dismissed.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$500.00, in partial satisfaction of the monetary claim.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

As the tenant's Application does not have merit, I decline filing fee costs to the tenants.

Conclusion

The landlord has been granted an Order of Possession that is effective January 22, 2011, at 1 p.m. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$3,840.96, which is comprised of \$3,700.00 in unpaid November, December, 2010 and January 2011, rent; a \$90.96 cable bill and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus, in the amount of \$500.00, in partial satisfaction of the monetary claim.

The balance of the monetary claim for unpaid November rent and cable fees, is dismissed.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$3,340.96**. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 18, 2011.

Residential Tenancy Branch