



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenants: CNC, CNR

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for cause and for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite filing their own application, and despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 10, 2011, the tenants did not attend. During the course of the hearing, the landlord also applied to amend his application to include an application to keep all or part of the security deposit in partial satisfaction of the claim.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2011 and he believes the tenants are moving today, June 1, 2011. Rent in the amount of \$700.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the tenants were required under the tenancy agreement, a copy of which was provided in advance of the hearing, to pay a security deposit in the amount of \$350.00 however the tenants only paid \$200.00 on March 6, 2011.

The landlord further testified that on April 29, 2011 he served the tenants with a 1 Month Notice to End Tenancy for Cause by personally serving the female tenant. A copy of that notice was provided in advance of the hearing, and it states that the tenants are repeatedly late paying rent and that the tenants failed to pay the security deposit within 30 days as required by the tenancy agreement. The notice is dated April 29, 2011 and contains an expected date of vacancy of May 31, 2011.

The landlord also testified that the tenants failed to pay rent when it was due for the month of May, 2011 and on May 2, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally delivering it to the female tenant. A copy of that notice was also provided in advance of the hearing, and it states that the tenants failed to pay rent in the amount of \$700.00 that was due on May 1, 2011. The notice is dated May 2, 2011 and contains an expected date of vacancy of May 12, 2011.

On May 6, 2011 the female tenant personally served the landlord with the Tenant's Application for Dispute Resolution.

The landlord requests an Order of Possession, a monetary order in the amount of \$1,450.00 for rent for the month of May, 2011 and loss of revenue for the month of June, 2011 as well as recovery of the \$50.00 filing fee, and an order permitting the landlord to keep the security deposit of \$200.00 in partial satisfaction of the claim.

Analysis

Firstly, with respect to the tenants' application, the tenants have not attended the hearing and therefore, the tenants' application must be dismissed.

I have reviewed the documentation provided by the landlord, and I find that the landlord has issued the 1 Month Notice to End Tenancy for Cause prematurely with respect to repeated late rent payments. The landlord must be able to establish that the tenants have been late with the rent on at least 3 occasions, which I find the landlord has failed to establish. However, I find that the landlord has established that the tenants failed to pay the security deposit within 30 days. The *Act* states that the tenants may dispute the

notice within 10 days of receipt, and the tenants have filed their application within the time required under the *Act*, but failed to attend the hearing to establish their claim.

I also accept the evidence of the landlord that the tenants have failed to pay rent for the month of May, 2011 and the landlord has properly served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The *Act* states that the tenants have 5 days from the date the tenants are deemed to have been served with the notice to pay the rent in full or apply for dispute resolution disputing the notice. The tenants have filed their application within the time required under the *Act*, but failed to attend the hearing to prove their claim, and have failed to pay the rent, and therefore, I find that the landlord is entitled to an Order of Possession.

I further find that the tenants are in arrears of rent the sum of \$700.00, and the landlord is entitled to a monetary order for that amount. With respect to the landlord's claim for loss of revenue, I find that the landlord has not been able to re-rent the unit or advertise it for rent while the tenants have had possession of it. I also refer to Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent," which states that:

"These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

"The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

"In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. If a month to month tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time."

In this case, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities with an effective date of May 12, 2011. The tenants have not vacated the rental unit and the effective date has passed. Therefore, I find that the landlord is entitled to a monetary order for loss of revenue because if the tenants had decided to end the tenancy, their notice would not have been effective until the end of June, 2011.

With respect to the landlord's application to amend the Landlord's Application for Dispute Resolution to include an application to keep all or part of the pet damage deposit or security deposit, the *Residential Tenancy Act* states that if a monetary order is made, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. Therefore, I find it just in the circumstances to allow the amendment and order the landlord to retain the \$200.00 security deposit paid by the tenants in partial satisfaction of the landlord's claim.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord. The tenants must be served with the Order of Possession. If the tenants are served with the Order of Possession and fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I further order the landlord to retain the security deposit in the amount of \$200.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$1,250.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: June 02, 2011.

Residential Tenancy Branch