



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application 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.

Both tenants and an agent for the landlord corporation attended the conference call hearing, provided affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All information 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?

Background and Evidence

The landlord's agent testified that his month-to-month tenancy began on January 1, 2009 and the tenants still reside in the rental unit. The rental unit is subsidized according to the tenant's income and is reviewed annually. Currently, rent in the amount of \$1,200.00 per month is payable in advance on the 1st day of each month. No security deposit or pet damage deposit were collected by the landlord.

The landlord's agent further testified that in 2009 the tenants had provided information that only the male tenant had an income, and the rent was set at \$646.00 using the male tenant's declared income. A tenancy agreement was prepared and signed by the parties, which sets the rent at \$1,200.00, however the landlord collected only the smaller amount. She stated that the responsibility lies with the tenants to provide income information when changes of income occur, and the tenants are to provide income information on the anniversary date each year, which is January 1. The information they are to provide includes the Notice of Assessment from Revenue

Canada, and the landlord then compares the declared income to the Notice of Assessment to ensure that the declared income is close to the Notice of Assessment. The landlord didn't receive the Notice of Assessment for 2009 until May, 2011.

In 2010 the tenants provided the male tenant's income information which changed the subsidy and the rent was then set at \$751.00. The landlord did not receive a Notice of Assessment for 2010, however in November, 2010 the landlord received pay stubs from both tenants. The male tenant's pay stub showed a year-to-date total that was much higher than declared by the tenants, and the female tenant also had income. The 2010 information provided by the tenants that was used to calculate the rent at \$751.00 per month was a difference of almost \$39,000.00 per year in comparison to the pay stubs. Therefore, the tenants received a subsidy that they were not entitled to, and rent for 2011 was set at \$1,200.00 which is the maximum amount of rent payable if the tenants do not qualify for a subsidy.

She further testified that tenants are sent a notice 3 months prior to the anniversary date advising that a review of their subsidy was due at the end of the year, then another notice is sent 30 days prior to the end of the year, and another as a final notice. In this case, the tenants were sent the first notice on October 1, 2010, the second notice on November 1, 2010 and the final one was sent on December 1, 2010 stating that the maximum amount of \$1,200.00 per month would be payable unless the tenants provided the income information.

The landlord's agent further testified that the tenants paid \$32.00 on January 1, 2011, \$751.00 on February 1, 2011, \$751.00 in March, 2011, \$751.00 on April 14, 2011 and \$800.00 on May 10, 2011. No rent has yet been paid for June, 2011, and the landlord did not issue a receipt for the May 10 payment or any other document that stated that the rent was being accepted for use and occupancy only.

On April 21, 2011 an employee of the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail, a copy of which was provided in advance of the hearing. The notice is dated April 20, 2011 and states that the tenants failed to pay rent in the amount of \$2,824.00 that was due on April 1, 2011 and contains an expected date of vacancy of April 30, 2011. She stated that the tenants held a credit balance of \$314.00 at the beginning of 2011, the tenants ought to have paid \$7,200.00 in rent for 2011 and have paid \$3,085.00. After deducting the credit balance, the arrears now amount to \$3,678.00. When asked how the landlord arrived at the amount of \$2,824.00, the landlord was unable to provide an explanation.

During cross examination, the landlord's agent testified that the tenants were provided with a "Hardship" subsidy for November and December, 2010 during which the rent was reduced to \$314.00 per month for those 2 months.

The male tenant testified that he started a new job in September, 2010, and went into the bush to work. He took a month off from December 4, 2010 to January 5, 2011 and they had their third child during that time. He stated that they were told to pay \$32.00 by one of the landlord's employees, but does not remember who. He also stated that when the files were transferred from the landlord's Prince George office, things got messed up.

He further testified that upon noticing mould in the basement of the rental unit, he spoke to one of the landlord's agents who said she'd look for another unit for the tenants to move into, but that has not yet happened.

The female tenant testified that she sent the landlord her paystubs and child tax information but not the Notice of Assessment. She further stated that the landlord sent the tenants a notice in February, 2011 stating that their rent was \$1,113.00 for 2011. The landlord disputed that evidence stating that the notice dated February 23, 2011 states that the rental amount is \$1,200.00.

Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end the tenancy on any date after the date rent is payable. The tenant then has 5 days to dispute the notice, or pay the rent in full, in which case the notice has no effect. If the tenant does not pay the rent or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date. In this case, I find that the tenants were deemed to have been served with the notice 5 days after mailing it, or on April 26, 2011. The tenants then had until May 1, 2011 to pay the rent or dispute the notice, which they did not do. I further find that the effective date of the notice is incorrect, and the effective date is changed to May 6, 2011.

With respect to the 10 Day Notice to end Tenancy for Unpaid Rent or Utilities, I find that the landlord accepted rent for a period after the effective date of the notice and did not provide anything in writing to the tenants that it was being accepted for use and occupancy only, and has thereby reinstated the tenancy. Therefore, the landlord's application for an Order of Possession cannot succeed. Further, I find that the landlord

has not provided sufficient evidence to satisfy me that the amount of rental arrears contained in the notice is a correct amount.

With respect to the landlord's application for a monetary order, I accept the evidence of the landlord's agent and conclude that the current rent payable is \$1,200.00 per month. I have calculated the rent owed and paid for 2011 below:

DATE	AMOUNT DUE	AMOUNT PAID	ADJUSTMENTS	BALANCE DUE
Feb/11	\$1,200.00	\$751.00		\$1,303.00
Mar/11	\$1,200.00	\$751.00		\$1,752.00
Apr/11	\$1,200.00	\$751.00		\$2,201.00
May/11	\$1,200.00	\$800.00		\$2,601.00
Jun/11	\$1,200.00	0.00		\$3,801.00

I find that the landlord is entitled to a monetary order in the amount of \$3,801.00 up to the end of June, 2011. 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 landlord's application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$3,851.00. 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 16, 2011.

Residential Tenancy Branch