



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenants admitted that they received the Landlord's Application and Notice of Hearing on June 27, 2011.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on January 1, 2000. Rent is subsidized (or based on the Tenants' income) and as of July 1, 2010 it was \$485.00 per month. The Parties agree that in May 2011, the Tenants' rent was reduced to \$311.00 per month retroactive to April 2010 to account for their changed financial circumstances. Rent is payable in advance on the 1st day of each month.

The Landlord said that after adjusting the Tenants' rent for the previous 14 month period, the Tenants still had rent arrears of \$1,884.00 as of June 1, 2011. In particular, the Landlord said the Tenants had an outstanding balance of \$18.00 and did not pay any rent for the period, January to June 2011. Consequently, the Landlord's agent said she served the Tenants on June 9, 2011 by registered mail with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 9, 2011. The Tenants said that due to a postal strike, they did not receive this Notice until June 28, 2011.

The Tenants claimed that they made a payment of \$891.00 by money order in March 2011 but admitted that this was not delivered to the Landlord and it was returned to them in June 2011 and cashed by them. The Tenants admit that the only rent payment they have made for 2011 was a \$311.00 payment made on July 6, 2011. The Landlord's agent said she gave the Tenants a receipt for this payment showing that it was accepted for use and occupancy only. The Tenants initially claimed that they were not sure how much was owed for rent was but then admitted that they received a letter from the Landlord in June 2011 (that had been mailed in late-May 2011 prior to

the mail strike) which stated that their rent had been reduced to \$311.00 retroactive to April 2010 and they acknowledged in writing rent arrears of \$1,572.00 (as of May 2011) and agreed to a repayment schedule. The Landlord said the Tenants did not return the signed agreement when required and failed to make any additional payments (on the arrears) as agreed. The Tenants claim they got the repayment agreement only after the mail strike but did not dispute that they have failed to make payments of the arrears as agreed to on that repayment agreement. The Tenants argued, however that in March 2011 they asked for a further rent reduction or for hardship relief but nothing was done.

Analysis

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 (if they believe the amount is not owed) 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 will end on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy 5 days after it was mailed. However, a deeming provision such as this may be rebutted by other evidence. In this case, I find that the 10 Day Notice could not be delivered within 5 days due to an intervening postal workers' strike. Consequently, I find that the Tenants received the 10 Day Notice dated June 9, 2011 on June 28, 2011. As a result, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than July 4, 2011 (given that the 5th day fell on a Sunday or non-business day).

The Tenants did not apply for dispute resolution to cancel the 10 Day Notice and I find that there are rent arrears of \$1,866.00 which represents 6 months of unpaid rent. I find that there is insufficient evidence to support the Landlord's claim of an outstanding balance of \$18.00 as of December 31, 2010. I also find that the Landlord is not entitled to recover a late fee of \$50.00 for June 2011 rent given that that late fee does not comply with the requirements of s. 7 of the Regulations to the Act. Although the Tenants argued that they should have been entitled to a further rent reduction to address their financial circumstances in March 2011, s. 2 of the Regulations to the Act makes it clear that the Director may not deal with rental increases when rent is based on the tenant's income and set by one of the housing societies listed in that section.

The Tenants also argued that they should not have to pay rent because the Landlord failed to make necessary repairs to the rental unit. However, s. 26 of the Act says that "a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent." Consequently, in order for the Tenants to legally withhold rent, they would have had to apply for dispute

resolution and obtain an Order authorizing them to withhold their rent which they did not do.

Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,866.00 as well as the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$1,916.00** have been issued to the Landlord. 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: July 19, 2011.

Residential Tenancy Branch