



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

<u>Dispute Codes</u>	Tenant CNR, MNR, OLC, PSF, ERP, RP, RR Landlord OPR, MND, MNDC MNSD, FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession and a monetary order for unpaid rent, for damage or loss under the Act, the regulations or the tenancy agreement, for recover the filing fee for this proceeding and to retain the Tenants' security deposit.

The Tenant filed for an order to cancel the Notice to End Tenancy, for monetary compensation for repairs to the property, to have the Landlord comply with the Act, to provide services and facilities, to allow the Tenant a rent reduction for emergency and general repairs to the unit.

Service of the hearing documents by the Landlord to the Tenants was in dispute. The Tenants said they did not receive the hearing packages from the Landlord and the Landlord said she delivered the packages to the Tenants. The Landlord provided 2 witnesses that testified that the hearing packages were delivered. The Tenants testified the hearing packages were not delivered. As the service requires by the Landlord to the Tenants is in question and as the Tenants do not have the Landlord's hearing package I dismiss the Landlord's application with leave to reapply as the service requirements of section 89 of the Act have not been clearly met.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on June 10, 2011, in accordance with section 89 of the Act.

The Landlord confirmed that she received the Tenants' hearing packages.

At the start of the Hearing the Dispute Resolution Officer informed the parties that the application is to contest a Notice to End Tenancy for Unpaid Rent and the other claims by the Tenants which include a monetary claim, the application for the Landlord to comply with the Act, repairs to the unit and the request for the Landlord to provide services claim by the Tenant are separate and unrelated disputes to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants' application for a monetary claim,

emergency and general repairs to the unit, for the Landlord to comply with the Act, the Landlord to provide services and for a rent reduction is dismissed with leave to reapply.

Issue to be Decided

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on April 1, 2011 as a fixed term tenancy with an expiry date of March 31, 2012. Rent is \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$900.00 on April 1, 2011.

The Landlord said that the Tenant did not pay \$1,800.00 of rent for June, 2011, when it was due and as a result, on June 3, 2011 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenants' door dated June 3, 2011. The Tenant said they received the Notice to End Tenancy for Unpaid Rent. Landlord said the Tenant has not paid July, 2011 rent of \$1,800.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has not paid the unpaid rent. The Landlord requested an Order of Possession with the earliest effective vacancy date as possible if the Tenants application to Cancel the Notice to End Tenancy is unsuccessful.

The Tenant said they have not paid their rent for June and July, 2011 as the Landlord has not repaired things in the rental unit that she said she would repair and the utilities have been turned off. The Tenant continued to say they have made repairs to the unit and have not been paid back for the money they have sent. The Tenants said they were told by the Residential tenancy Branch not to pay their rent.

The Landlord said the utilities are not included in the tenancy agreement and the Tenants are responsible to put the utilities in their names and to pay the utilities. The Landlord said the Tenants refused to pay the rent when it was due.



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Analysis

There was much contradictory testimony and only some corroborative evidence submitted. I reviewed the testimony and the evidence that pertained to the Notice to End Tenancy.

The Landlord application is dismissed with leave to reapply due to contradicting testimony with regards to the service of the Landlord's hearing package. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondents that burden of proof is not met. The Landlord did not establish grounds to meet the burden of proof that the hearing packages were served to the Tenants in accordance to section 89 of the Act.

Section 26(1) of the Act says a tenant must pay 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.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated June 3, 2011 stands in effect and consequently, I find pursuant to s. 55(1)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenants.

As neither the Landlord nor Tenants were successful in this matter they are both ordered to bear the costs of the filing fee of this application. The Landlord has already paid the \$50.00 and the Tenants filing fee was waived.



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Conclusion

The Landlord's application is dismissed with leave to reapply.

The Tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The Tenants' application for a monetary claim for repairs and a rent reduction, the Tenants' application for emergency repairs and general repairs, for the Landlord to comply with the Act and the Landlord to provide services are dismissed with leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenants has 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.

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*.

Residential Tenancy Branch