



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, FF
Tenants: CNR, LRE, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy and order to suspend or set conditions on the landlord's right to enter the rental unit.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing the tenants clarified that when they checked "other" as part of their Application it includes compensation in the amount of \$500.00 to replace a freezer damaged by the landlord. The landlord noted that another tenant, has made a similar claim for which there is a hearing in early January 2012.

The tenants clarified the other tenant, their aunt, had given them the freezer. As such, with the landlord's agreement we proceeded with dealing with the issue of compensation for the freezer replacement at this hearing, based on the tenants' testimony of ownership.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided are if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order restricting the landlord's access to the rental unit; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 46, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by October 2, 2011 by both parties and a third tenant who is not named as a respondent in these proceedings. The agreement states the tenancy began on October 1, 2011 for a monthly rent of \$1,300.00 due on the 1st of each month. The landlord has submitted a receipt issued to one of the tenants for \$220.00 paid as a security deposit.

The landlord testified that one of the roommates and so he has reduced the amount of rent for the remaining two tenants to \$866.66 but that the tenants failed to pay rent for December when it was due.

The tenants testified that they had given their rent money to their aunt. The further stated that their aunt, also a tenant of this landlord under a separate tenancy agreement who also has a dispute with the landlord. The tenants stated that because the landlord has not compensated the aunt for her security deposit she would hold their rent until her dispute was resolved.

The tenants also testified the landlord broke into their freezer and since then it was not closing properly so they bought a new one. The landlord testified that he was approached by the tenant who moved out to help her remove her items from the freezer that these tenants had locked.

The landlord testified they went to the aunt who had the key to the freezer but that she refused to give it to them so they pried the door open and the tenant took her belongings. The landlord testified he ordered a replacement part and was prepared to repair it.

Analysis

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement despite any disputes they may have with the landlord. There certainly is no provision in the *Act* for a tenant to withhold their rent because another tenant of the same landlord has a dispute with the landlord.

As such, I find the tenants had not authority to withhold rent and I find the 10 Day Notice to End Tenancy for Unpaid Rent to be effective and enforceable. I also find based on the landlord's testimony and the tenancy agreement before me that the amount of rent owed to the landlord to be \$866.66. For these reasons, I dismiss this portion of the tenant's Application.

In relation to the portion of the tenant's Application seeking to suspend or set limits on the landlord's access to the rental unit, as the tenancy is ending, I find no need to make any findings. However, I note that Section 29 of the *Act* restricts the landlord's access to either mutual agreement; an emergency situation; or by providing 24 hour written notice served in accordance with the *Act*.

As to the tenant's claim for reimbursement to replace the freezer, I find that the landlord was acting on behalf of one of the tenants the matter is related to an issue between roommates and is therefore the landlord's responsibility. I further find that even if the landlord were responsible the tenants failed to take all reasonable steps to repair the freezer as opposed to replacing it. For these reasons, I dismiss this portion of the tenants' Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$916.66** comprised of \$866.66 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$220.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$696.66**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the tenants were unsuccessful in their Application I dismiss their request to recover the filing fee.

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: December 23, 2011.

Residential Tenancy Branch