



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord, J.W., said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) on November 24, 2011 by posting it to the rental unit door. Section 89 of the Act says that an application for an Order of Possession may be served by posting it to the door of the Tenants’ residence however it also says that ***an application for a Monetary Order must be served either in person or by registered mail.*** The Tenant, C.J. admitted that he received the Landlords’ hearing packages and **on that basis only**, I find pursuant to s. 71 of the Act that the Tenants have been sufficiently served with the Landlords’ hearing packages for the purposes of the Act.

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?
3. Is the Landlord entitled to compensation for a loss of rental income?

Background and Evidence

This tenancy started approximately 7 years ago. Rent is \$700.00 payable in advance on the 1st day of each month. The Landlord, J.W., said on October 17, 2011 he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 17, 2011 by posting it to the rental unit door. The Landlords did not provide a copy of the 10 Day Notice as evidence at the hearing.

The Landlord, J.W., said the Tenants made a payment of \$550.00 on October 22, 2011 and another payment of \$350.00 on December 1, 2011 for which they were issued receipts stating that the payments were accepted “for use and occupancy only.” J.W. claimed that \$1,200.00 is currently owed for unpaid rent up to and including December 2011.

The Tenant, C.J., admitted that he received a Notice on October 17, 2011 that stated \$700.00 was owed for rent, however he claimed that only \$350.00 was owing at that time because the Landlords would have received a payment of \$350.00 for October rent from the Ministry of Income Assistance on behalf of P.J. at the end of September. Consequently, C.J. claimed that \$850.00 is owed as unpaid rent.

Analysis

The Landlord, J.W., said he was uncertain if there was a written tenancy agreement however, the Tenant, C.J. claimed that the Landlord did not enter into a written tenancy agreement. C.J. claimed that when he moved in, P.J. was already residing in the rental unit and as a result, it was his position that he had a separate agreement with the Landlord to pay ½ of the rent. RTB Policy Guideline #13 says at p. 2 that “in the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.” I find that there is no clear evidence of a tenancy in common and therefore I conclude that the Tenants are joint tenants who are jointly responsible for paying the rent.

Section 46 of the Act says that a Landlord may seek to end a tenancy by serving a Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that complies with s. 52 of the Act. Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord must be signed and dated, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy and be in the approved form. The Landlords did not provide a copy of the 10 Day Notice as evidence at the hearing and therefore I find that there is insufficient evidence if the 10 Day Notice dated October 17, 2011 is enforceable (ie if complies with s. 52 of the Act) and as a result, it is cancelled. For the same reason, the Landlords’ application for an Order of Possession is dismissed without leave to reapply.

The Landlord, J.W., provided two receipts as evidence; one dated October 22, 2011 showing a payment by C.J. of \$200.00 and of \$350.00 by P.J. The Tenant claimed that the \$350.00 payment by P.J. was for November 2011 rent because \$350.00 had already been paid for October rent at the end of September 2011. J.W. claimed that the receipt showed the date the payment was made and argued that the month for which it was paid didn’t matter. With all due respect, I disagree. The Landlords provided no other financial records to show the Tenants’ history of payments and therefore where the evidence of the Parties differs on this issue, I prefer the evidence of the Tenants and conclude that as of October 15, 2011, there was unpaid rent of \$350.00 and not \$700.00 as alleged by the Landlords. Consequently, I find that there are rent arrears of \$850.00 as follows:

October 2011:	\$150.00
November 2011:	\$350.00
December 2011:	\$350.00

I also find the Landlords are also entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee they paid for this proceeding.

Conclusion

The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$900.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 07, 2011.

Residential Tenancy Branch