



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNR, MNDC, RP and FF

This application was brought by the tenants on February 20, 2012 seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent sent on February 16, 2012 by registered mail. The tenants also sought monetary compensation for loss of use of a portion of the rental unit due to water intrusion and other consequent losses.

Issue(s) to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld, and whether the tenants are entitled to monetary compensation for the claims submitted.

Background and Evidence

This tenancy began on May 1, 2011 under a fixed term agreement set to end on April 31, 2012 (*sic*) corrected to April 30, 2012 with the selected option that tenants must vacate at the end of tenancy date. Rent is \$2,295 per month and the landlord holds a security deposit of \$1,147.50 paid on April 8, 2011.

During the hearing, the landlord gave evidence that she had served the tenants with the Notice to End Tenancy after she had learned that their rent cheque for February rent had failed to go through because the tenants had stopped payment on it.

The tenants concurred that they had not paid the February rent because they had suffered considerable inconvenience and loss of use of part of the rental unit due to water intrusion.

The parties are in dispute as to which of them was responsible for maintaining a patio drain, the failure of which apparently caused the water intrusion.

The tenants stated that at the time of the hearing, the remediation had been completed and they have full use of the rental unit once again.

Given the more urgent matter of the Notice to End Tenancy, I declined to hear detailed evidence on the tenant's monetary claims which I adjourned in anticipation of a cross application from the landlord for a Monetary Order and to permit the parties an opportunity to continue discussions regarding a possible settlement.

Analysis

Section 26(1) of the Act provides that:

“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.”

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did make timely application to contest the notice but that they did not pay the rent within five days of receiving the notice and that they had no right under the Act to withhold it.

Therefore, I found that the Notice to End Tenancy was lawful and valid and that there is no cause under which I would be authorized under the legislation to set it aside.

On hearing that determination, the landlord requested an Order of Possession as prescribed at section 55(1) of the *Act* I find she is entitled to the order to take effect on March 31, 2012 as requested.

The landlord stated that she would give consideration to not enforcing the order if the February 2012 rent is paid and if the cheque issued for March 2012 rent is cleared.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 31, 2012.

The monetary portion of the tenants application is adjourned to a time and date set out in the attached Notice of Hearing, and the tenants are reminded that they must ensure service of the notice on the landlord.

The landlord remains at liberty to make application for her monetary claims, and if she so chooses, I would ask that she do so in the near future and request that her application be heard together with the reconvening of the present application.

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: March 07, 2012.

Residential Tenancy Branch