



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR / OPR, MNR, FF

Introduction

This hearing concerns 2 applications: i) by the tenants for cancellation of a notice to end tenancy for unpaid rent or utilities; ii) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence before me for this tenancy which began approximately 2 years ago. The tenants testified that a security deposit of \$325.00 was collected at the start of tenancy. Monthly rent is currently \$675.00, and it is due and payable on the first day of each month.

The landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated May 3, 2012. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted in evidence. The notice documents that rent of \$700.00 remained unpaid on May 1, 2012. It is understood that this amount is comprised of \$350.00 overdue for April, in addition to \$350.00 overdue for May 2012.

Subsequently, while the tenants filed an application to dispute the notice on May 9, 2012, they have made no further payment toward rent for either April or May 2012, and they continue to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 46 of the Act addresses **Landlord's notice: non-payment of rent**, and provides in part:

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part:

55(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent or utilities dated May 3, 2012. The notice concerned rent which remained overdue for April and May 2012. The notice was posted on the unit door on May 3, 2012. While the tenants filed an application to dispute the notice within 5 days of being served, the tenants made no further payment toward rent for April or May 2012, and they continue to reside in the unit. Following from all of the above, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim of \$750.00, which is comprised of a combined total of \$700.00 in unpaid rent for April and May 2012, in addition to the \$50.00 filing fee.

I find that the aspect of the landlord's application concerning loss of rental income for June 2012 is premature, and it is therefore dismissed with leave to reapply.

Conclusion

The tenants' application is hereby dismissed.

I hereby issue an order of possession in favour of the landlord. Pursuant to the landlord's request, this order is effective no later than 1:00 p.m., Monday, June 4, 2012. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$750.00. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: May 30, 2012.

Residential Tenancy Branch