



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNR, DRI, MNDC, FF
 Landlord OPR, OPB, MNR, ET, O

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, a monetary order for unpaid rent and other considerations.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; to dispute a rent increase, to receive monetary compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on May 23, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on May 7, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and utilities and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and utilities and if so how much?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Landlord entitled to a rent increase?
3. Are the Tenants entitled to monetary compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started with a previous tenancy with the male Tenant and then a new tenancy agreement and a new tenancy was started on April 1, 2012 with both tenants. The new tenancy was on a month to month basis. Rent is \$795.00 plus utilities per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 which was paid in the previous tenancy.

The Landlord said that the Tenant did not pay the full rent of for May, 2012. The Landlord said there is \$160.00 of unpaid rent for May, 2012, and as a result, on May 4, 2012, the Landlord personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 4, 2012 to the Tenants. Further the Landlord said the Tenants have not paid utilities in the amount of \$56.88. The Landlord continued to say that Hydro rates have increased by 5.8%, but he had not included that on his application and the rate increase information is not in the evidence package. The Landlord said if his application is successful he is requesting an Order of Possession.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$216.88 in unpaid rent and utilities and the \$50.00 filing fee for a total claim of \$266.88.

The Tenants said the Landlord increased the rent by \$100.00 per month in the new tenancy agreement which is why the Tenant deducted \$160.00 from the rent due. The Tenant said he understands that the full rent was not paid under the new tenancy agreement and the reason he did not pay it was that he thought the new tenancy agreement was a continuation of the old tenancy agreement. The Tenant said if that is the case then the Landlord could not raise the rent by \$100.00 and he is disputing the rent increase. The Tenant said if the new tenancy agreement is valid then he does owe the unpaid \$160.00 for rent.

The Tenant continued to say that he is not disputing the utility costs and he is going to pay the \$56.88 of unpaid hydro and he will pay his current hydro bill when it comes due.

As well the Tenant offered the Landlord a settlement of \$80.00 for the unpaid rent. The Landlord declined the settlement offer and requested the full amount to be paid.

Analysis

The evidence submitted has two tenancy agreements. One is dated June 2, 2011 and is between the Landlord and the male Tenant. There is also a signed agreement dated April 3, 2012 signed by both the male Tenant and the Landlord voiding the tenancy agreement dated June 2, 2011. The second tenancy agreement is signed by the two Tenants and the Landlord dated April 3, 2012 with a rent of \$795.00 which is \$100.00 more than the previous agreement. I find that the previous agreement dated June 2, 2011 is void and the tenancy agreement dated April 3, 2012 is in effect for this tenancy.

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

I find that the Tenants have not paid the overdue rent and the Tenants did not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants' application to Cancel the Notice to End Tenancy for Unpaid Rent, as they agreed they have unpaid rent that he has withheld from the Landlord. Further as the Tenants' application is based on information in the previous tenancy agreement not the tenancy agreement in effect at the present time, I dismiss the Tenants' application to dispute a rent increase and for monetary compensation.

I accept the Landlord's testimony and evidence that there is unpaid rent and utilities in the amount of \$216.88. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent and utilities of \$216.88.

Further, I find that the Tenant has not paid the overdue rent and have been unsuccessful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.



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As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. . The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$216.88	
Recover filing fee	\$ 50.00	
Subtotal:		\$266.88
Balance Owing		\$ 266.88

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$266.88 have 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 and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply and the Tenants are ordered to bear the cost of \$50.00 for the application which they have already paid.

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