



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, MNR, MNDC, MNSD, FF

Tenant: CNR, OLC, RP, LAT, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, for an Order that the Landlords comply with the Act by making repairs, for an Order permitting him to change the locks on the rental unit and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are repairs required?
4. Is the Tenant allowed to change the locks?

Background and Evidence

The Parties do not agree when the tenancy started. The Landlords claim the tenancy started on March 15, 2012 when one of them did a move in condition inspection report and the Tenant paid a security deposit of \$425.00. The Tenant claims that although the Landlords let him leave some belongings in the rental unit on March 15th, the tenancy was not supposed to start until April 1, 2012 and he did not reside there until that time. The Tenant says he signed a tenancy agreement which the Landlords deny.

The Parties agree that rent is \$850.00 per month payable in advance on the 1st day of each month. The Tenant said he gave the Landlords post-dated rent cheques but put a stop payment on them. The Landlords deny that the Tenant gave them post-dated cheques and claim instead that the Tenant has given them numerous excuses for not

paying the rent. The Parties agree that on April 5, 2012, the Landlords served the Tenant with a 10 day Notice to end Tenancy for Unpaid Rent by posting it to the rental unit door. The Parties also agree that rent has not been paid for April or May 2012.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

Although the Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent within the time limits set out under s. 46(4) of the Act, I am unable to grant his application because he admitted that he has not paid the rent for April 2012 that was due on April 1, 2012. Consequently, the Tenant's application to cancel the 10 Day Notice dated April 5, 2012 is dismissed without leave to reapply. As a further consequence, I find pursuant to s. 55(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Given the contradictory evidence of the Parties regarding when the tenancy started, and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to support the Landlords' claim for rent for ½ of March 2012 and it is dismissed without leave to reapply. I find that the Landlords are entitled to unpaid rent for April 2012 in the amount of \$850.00, unpaid rent for May 1 – 2, 2012 in the pro-rated amount of \$54.84 and a loss of rental income for the period, May 3 – 15, 2012, in the pro-rated amount of \$356.45. The Landlords may apply for a further loss of income for May 2012 if necessary.

I find that the Landlords are entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$425.00 in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing of \$886.29.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$886.29** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; 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.

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 02, 2012.

Residential Tenancy Branch