



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC and FF

Introduction

This hearing was convened on the tenants' application of March 14, 2012 seeking to have set aside a one-month Notice to End Tenancy for cause dated April 23, 2012 and setting an end of tenancy date of May 31, 2012. The tenants also sought a Monetary Order for return of \$6,500 claimed to have been paid to the landlord on their behalf by the Employment and Income Assistance Office.

While the Notice to End Tenancy cited numerous causes to end the tenancy on the rental agreement, the hearing first proceeded on a claim of repeated late payment of rent on the understanding that if that cause was proven, it would not be necessary to canvass the others.

The other claims included: unreasonable number of occupants; significant interference; jeopardy of health, safety or lawful right; significant risk to the property; quiet enjoyment, jeopardy of lawful rights and assignment or sublet without consent.

Issue(s) to be Decided

Has the landlord proven that the tenants' rent was paid late a sufficient number of times to justify ending the tenancy for repeated late payment? If not, has the landlord substantiated any or all of the other causes cited? Have the tenants proven that the ministry has paid the landlords \$6,500 on their behalf.

Background and Evidence

This tenancy began on January 1, 2011. Rent is \$1,900, due on the first day of each month, and there is no security deposit.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenants had been late with rent payments three times in 2012 and five times in 2011.

He stated that, for the current year, the tenants were late in February, March and April, and at the time of the hearing, the March and April rents remained unpaid. The tenants contested whether February rent was late.

The landlord's agent gave further evidence that the tenants' rent had been paid late five times in 2011 including February, April, May, July, August and September, and on one occasion was three months in arrears. The agent stated that the landlord had directed him to take action to end the tenancy if the pattern continued in 2012 and the tenants had been duly cautioned.

The tenants stated that they had withheld rent because they believed the landlord had not credited them for monthly payments made by the Ministry on their behalf. They submitted a printout showing that the female tenant received such payments from February 2011 to January 2012 but there is no documentation to show that the payments were directed to the landlord. The landlord's stated that there is no record of the payments having been made to the landlord.

Analysis

Section 26(1) of the *Act* states 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."

I find as fact that the tenants rent was paid late on two or three occasions in 2012 and on five occasions in 2011, far more than the three late payments within one year that is considered a benchmark to establish repeated late payment.

I find that the tenants had no right under the *Act* to withhold rent or to pay the rent late and, therefore, I upheld the Notice to End Tenancy.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order when a tenant's application to set aside a notice to end tenancy is dismissed or the notice is upheld. I find he is entitled to the Order of Possession to take effect on May 31, 2012 as set by the notice.

As to the tenants' claim for return of payments made on their behalf by way of Income Assistance, I find that the tenants have failed to prove that such payments were made. Therefore, I dismiss this portion of their application with leave to reapply.

Similarly, the landlord put forward a monetary claim. While I cannot consider his claim on the tenants' present application, the landlord is at liberty to make his own application.

Conclusion

The landlords' 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 May 31, 2012.

Both parties remain at liberty to make application for their monetary claims.

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 17, 2012.

Residential Tenancy Branch