



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNR
For the landlord: OPR, MNR, FF

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue-

The tenants are no longer in the rental unit, having vacated on April 30, 2012. Therefore it was unnecessary to consider the tenants' application seeking cancellation of the Notice or the landlord's request seeking an order of possession for the rental unit.

The hearing proceeded on the issue of the landlord's request for a monetary order for unpaid rent and to recover the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

This month to month tenancy began on July 1, 2011, ended on April 30, 2011, monthly rent was \$750.00 and the tenants paid a security deposit of \$375.00 at the start of the tenancy.

The landlord stated that the tenants gave her a two month notice of their intent to move out by the end of March 2012, but failed to do so.

The landlord submitted that she allowed the tenants to stay until the middle of April, due to the male tenant's medical condition, but that they still did not vacate, having paid only \$125.00 in rent for April. Thereafter the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenants on April 16, 2012, listing unpaid rent of \$625.00.

The tenants responded with the argument that the landlord sold the house and that the new owners moved in on April 17, 2012. According to the tenants, the new owners did not want rent from them.

The tenants also pointed out that the landlord wrote two different rent receipts, both dated April 15, with one showing the tenants paid \$500.00 in rent, consisting of the payment of \$125.00 and the security deposit being used, in the amount of \$375.00.

The other receipt showing the same payment of \$125.00 and notating that the tenants owed \$250.00, with the credit of the security deposit of \$375.00.

The first receipt was entered into evidence by the tenants and the second receipt was entered into evidence by the landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that they do not owe rent to the landlord or had some other legal right to withhold rent.

In the case before me, I find that the tenants owed rent of \$750.00 on April 1, 2012, and paid the amount of \$125.00.

Although I find the landlord could not prove that the amount of unpaid rent of \$625.00 listed on the Notice was a valid amount, due to the conflicting receipts, I find that both receipts were consistent in showing the tenants being credited with the amount of their payment of \$125.00 and their security deposit and that the tenants owed a balance of \$625.00.

The issue of new owners moving into the upper portion of the home has no relevance to the tenants' dispute of the landlord's application.

I find the evidence clearly demonstrates that the tenants paid the amount of \$125.00 for rent in April 2012, leaving a rent deficiency of \$625.00 for that month.

I therefore find the landlord has established a monetary claim of \$625.00 for unpaid rent for April 2012.

I also find the landlord's application had merit and I find she should recover the filing fee of \$50.00.

I therefore find that the landlord has established a **total monetary claim of \$675.00**, comprised of unpaid rent of \$625.00 and the filing fee of \$50.00,

I also find it clear that the landlord has established that she seeks to retain the security deposit of \$375.00 in partial satisfaction of the unpaid rent for April. I therefore find the landlord is entitled to retain the tenants' security deposit in partial satisfaction of her monetary claim.

I therefore find the landlord is entitled to a monetary order in the amount of \$300.00, which is her monetary claim of \$675.00, less the tenants' security deposit of \$375.00.

Conclusion

I therefore **grant** the landlord a monetary order pursuant to section 67 of the Act for **\$300.00**.

I am enclosing the monetary order for \$300.00 with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this monetary order.

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 22, 2012.

Residential Tenancy Branch