



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for unpaid rent and money owed or compensation due to damage or loss.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 22, 2011 with monthly rent of \$1000.00 and the tenants paid a security deposit of \$500.00.

On June 1, 2012 the landlord served the tenants with a 10 day Notice to End Tenancy for Unpaid Rent.

The tenants testified that the landlord advised them verbally in mid May 2012 that they would have to vacate the rental unit effective May 30, 2012. The tenants stated that when the landlord received their June rent cheques he did not return the rent money to the tenants and they needed this money for their new rental unit. The tenants stated that on May 30, 2012 they gave the landlord written notice to vacate the rental unit effective June 30, 2012.

The landlord testified that the tenants had often advised the landlord that they were going to move and on May 30, 2012 the tenants gave the landlord written notice to vacate effective June 30, 2012. The landlord stated that to help the tenants secure a new rental unit the landlord used \$500.00 of the tenant's June 2012 rent, wrote a cheque to the tenant's new landlord for \$400.00 as a security deposit and then gave the tenants an additional \$100.00 for the new rental unit. The landlord stated that the tenants then only paid \$500.00 of the \$1000.00 June 2012 rent and the balance of \$500.00 remains unpaid.

The tenant stated that they knew nothing about the \$400.00 the landlord paid their new landlord but acknowledged that they had missed out on their new rental unit because they did not get all the June rent money back from the landlord.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds to have the notice to end tenancy for unpaid rent set aside however they are not entitled to return of the June 2012 rent.

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 pay the overdue rent or apply for dispute resolution. If the 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

In this instance the tenants have applied to dispute the notice to end tenancy for unpaid rent and as the parties testimony conflicts on the balance of the \$500.00 and if the tenants are now responsible for this amount, the landlord's notice will be set aside. The tenants understand that as they remained in the rental unit for June 2012 that the June 2012 rent was/is due and payable in full.

However as the tenants have given the landlord proper notice to vacate effective June 30, 2012 and the landlord has requested an order of possession for this date, an order will be provided to the landlord.

In regards to the unpaid rent and utilities, the landlord is at liberty to make an application through this office to recover those losses.

The landlord's notice is set aside however based on the tenant's notice to end tenancy the tenancy will effectively end on June 30, 2012 at 1:00 PM.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, June 30, 2012**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia 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: June 21, 2012

Residential Tenancy Branch