



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNR, MT
 Landlord OPR, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and more time to make an application.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on May 19, 2012 in accordance with section 89 of the Act. The Tenants confirmed receiving the Landlords' application and hearing package.

The Tenant said he did not service the Landlords their application and hearing package, because he thought the files were joined so he did not have to service the Landlords their application and hearing package. The Tenant was told that for an application to be heard it must be served to all the respondents. Service of the hearing documents by the Tenants to the Landlords were not done in accordance with section 89 of the Act. Consequently the Tenants' application is dismissed without leave to reapply as the time limits to dispute the Notice to End Tenancy have passed.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on December 15, 2009 as a fixed term tenancy with an expiry date of June 15, 2010. The tenancy then was renewed on a month to month basis. Rent is \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 on December 2, 2009.

The Landlords said that the Tenants did not pay \$10,320.00 of rent from the start of the tenancy to the present time and as a result, on May 7, 2012 they personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 7, 2012 to the Tenants. The Landlord submitted a Proof of Service document for the service of the 10 Day Notice to End Tenancy for unpaid rent and the Proof of Service is signed by a witness. The Landlords also said the Tenants did not pay the rent for June 2012, in the amount of \$1,100.00.

The Landlords' continued to say they have received a previous Monetary Order for \$6,865.00 dated June 1, 2011, for unpaid rent prior to June 1, 2011, which they have not enforced. Consequently the unpaid rent that is to be dealt with in this hearing is the unpaid rent from June 1, 2011 to June 1, 2012. The Landlord submitted a hand written summary of the unpaid rent for this tenancy which indicated an outstanding amount of rent from June 1, 2011 to May 31, 2012 of \$3,995.00 and the Landlord said the Tenants made an additional payment of \$500.00 after he received the Monetary order dated June 1, 2011. The Landlord said the amount of unpaid rent from June 1, 2011 to May 31, 2012 is \$3,455.00. This amount of \$3,455.00 can be verified as the same amount calculated by subtracting the amount of the June 1, 2011 Monetary Order of \$6,865.00 from the amount on the 10 Day Notice to End Tenancy for Unpaid rent dated May 7, 2012 in the amount of \$10,320.00. ($\$10,320.00 - \$6,865.00 = \$3,455.00$). It should be noted there is no written submissions from Tenants disputing the amount of \$10,320.00, which is on the 10 Day Notice to End Tenancy for unpaid rent.

The Landlords also said they are seeking to recover the \$50.00 filing fee for this proceeding. The Landlords said their total claim is for \$4,555.00 in unpaid rent for the time period of June 1, 2011 to June 1, 2012 and the \$50.00 filing fee for a total claim of \$4,605.00.

Further the Landlords said they are requesting an Order of Possession for as soon as possible if their application is successful.

The Tenant said he has unpaid the rent due to the Landlord, but he disputes the accuracy of the Landlords' unpaid rent calculations. The Tenant said he has not received all the receipts for rent payments therefore he cannot calculate the unpaid rent accurately. The Tenant said he does not know the amount of unpaid rent, but the Tenant requested that this be noted in the decision.

The Tenant continued to say that he has sent a promissory note to the Landlord for \$11,870.00 which represents the unpaid rent he believes they owe to the Landlord. As a result the Tenant said the Landlords have agreed to this as a loan so the unpaid rent is no longer unpaid rent but a loan. The Tenant continued to say he wants to make a payment plan with the Landlord. The Landlord said he received the Tenants' promissory note, but he did not agree to loan him the unpaid rent nor did he make an agreement for a repayment schedule. The Landlord said the money owed to them is unpaid rent. The Tenant said there is a payment agreement note dated April 24, 2012, signed by the Landlords in the Landlords' evidence package. The Landlord said they did sign this note, but the Tenants have not paid the \$2,200.00 promised nor have the Tenants paid the June, 2012 rent of \$1,100.00. Neither the Tenants nor the Landlords submitted the promissory note into evidence.

The Tenant continued to say that the Landlord has made some remarks that he considers slanderous and defamatory. The Tenant said he has not deceived or cheated the Landlord. The Tenant said he has just had a time period in which his health has been poor and his financial situation is difficult. As a result he is unable to pay his rent on time, but he is committed to paying the rent over time.

In closing the Landlord requested an Order of Possession for as soon as possible.

Analysis

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 do not have the right to withhold a part or all of the unpaid rent. I accept the Landlords' testimony and evidence that the Tenants owes \$4,555.00 in rent from June 1, 2011 to June 1, 2012 and I find that there is no written evidence to support a loan agreement or repayment plan to show the rent has been paid. Consequently, I find the Tenants have \$4,555.00 of unpaid rent from the period of June 1, 2011 to June 1, 2012.



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Further, I find pursuant to s. 55 (2) of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlords will receive a monetary order for the balance owing as following:

Rent arrears:	\$4,555.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$4,605.00
Balance Owing		\$4,605.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$4,605.00 have been issued to the Landlords. 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.

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