



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR MNDC RR FF O

For the landlords: OPR OPB MNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied to cancel at Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authority to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the filing fee and for other, however, the tenant did not specify details of the “other” portion of her claim in her application.

The landlords applied for an order of possession for unpaid rent, an order of possession due to a tenant breaching an agreement with the landlords, a monetary order for unpaid rent or utilities, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. Both parties confirmed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing.

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 Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties indicated several matters of dispute on their Applications for Dispute Resolution, the most urgent of which are matters related to the possession of the rental unit and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I find that not all the claims on the parties Applications for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee, and the landlords' request for an order of possession for unpaid rent or utilities, request for an order of possession due to the tenant breaching an agreement with the landlords, request for a monetary order for unpaid rent, and the landlords' request to recover the filing fee at this hearing. All other monetary portions of the parties' applications are **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Are the landlords entitled to an order of possession for unpaid rent or utilities?
- Are the landlords entitled to an order of possession for the tenant breaching an agreement with the landlords?
- Are the landlords entitled to a monetary order for unpaid rent?
- Should either party recover the filing fee?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2011. According to the written tenancy agreement provided as evidence prior to the hearing, the fixed term tenancy expired on July 31, 2012, and reverted to a month to month tenancy. Rent in the amount of \$1,100.00 is due on the first day of each month. A security deposit of \$600.00 was paid at the start of the tenancy.

The landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated August 10, 2012 on the same date, August 10, 2012. The tenant confirmed that she received the Notice on August 10, 2012, with an effective date of August 20, 2012. According to the Notice, the tenant did not pay rent in the amount of \$1,100.00 on August 1, 2012. The tenant confirms that she has not paid rent

for August or September due to a leak in the roof. The rental unit is one of 12 units in three-level strata building.

The tenant stated that the first leak occurred in the middle of June 2012, however, she was unable to provide an exact date during the hearing. The tenant affirmed that the work on the roof began on July 31, 2012, and was completed on August 8, 2012. The landlords stated that the work took approximately 6 weeks to complete as the landlords had to wait until the strata council received three quotes before the repair could be completed, and, the timeframe was beyond their control.

The parties agreed that the total cost of the roof repair for the building was approximately \$30,000.00. The landlords stated that their portion of the levy to pay for the roof repair is approximately \$3,600.00.

During the hearing, the landlords provided the tenant the offer to remain in the rental unit until the end of September, providing the tenant immediately pays the rent owing for the months of August and September, 2012. The tenant did not accept the offer from the landlords during the hearing.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Based on the tenant's testimony, **I find** that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The landlords have not received rent for August 2012 or September 2012. Section 26 of the *Act* states that the tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent, which this tenant does not have.

Given the above, **I find** that the Notice provided by the landlords is valid and that the tenancy ended on the effective date of the Notice, which was August 20, 2012. Given the above and taking into account the landlords' application for an order of possession, I find that the landlords are entitled to an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. As the tenancy is ending due to unpaid rent, I need not consider the allegations that the tenant breached an agreement with the landlords.

As the landlords were successful in their application, **I find** they are entitled to recover the filing fee of \$50.00.

I find that the landlords are entitled to monetary compensation pursuant to section 67 in the amount of **\$2,250.00** comprised of \$1,100.00 owing for August 2012 rent and \$1,100.00 for September 2012 rent, and the \$50.00 filing fee. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The security deposit of \$600.00 has accrued no interest to date.

Conclusion

I find that the landlords have proven their claim and are, therefore, entitled to an order of possession effective **two days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlords have established a total monetary claim of **\$2,250.00** as indicated above. I order that the landlords retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 for the balance due of **\$1,650.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 11, 2012

Residential Tenancy Branch