



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant CNR, MNDC, ERP, PSF, RR, O Landlord OPR, MNR, MND, MNDC, MNSD, FF
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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, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to do emergency repairs and general repairs to the unit site or property, for the Landlord to provide services and facilities, for a rent reduction and for other considerations.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on August 30, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on August 10, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call it was determined that the Tenant H. M. is not a tenant, but an occupant, because he was not named on the tenancy agreement nor did he sign the tenancy agreement. The Tenant said H.M. lived with them and was on a previous tenancy agreement, but not on this tenancy agreement. I accept the Tenant's testimony and the tenancy agreement submitted into evidence that H.M. is not a tenant, but an occupant and therefore H. M. is removed from the application.

At the start of the Hearing the Dispute Resolution Officer informed the Parties that the hearing will deal with the Landlords' application to end the tenancy, the Landlord's monetary claim for unpaid rent and the Tenant's application to contest a Notice to End Tenancy for Unpaid Rent. In section 2.3 of the Residential Tenancy Branch Rules of

Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application.

The Tenants applications for monetary compensation for damage or loss, for emergency repairs, other repairs, to provide services and facilities, for a rent reduction and for other considerations are separate and unrelated disputes to this application and are dismissed with leave to reapply.

As well the Landlords' claims for monetary compensation for damage or loss are also separate and unrelated claims to this application and are as well dismissed with leave to reapply.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenant's security deposit for unpaid rent?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 1, 2011 as a month to month tenancy. Rent in the tenancy agreement is \$2,200.00 per month payable in advance of the 1st day of each month. The Landlord and the Tenant both said the rent was reduced to \$1,300.00 per month from January 1, 2012. The Tenant paid a security deposit of \$1,100.00 on May 1, 2011.

The Landlord said that the Tenant had unpaid rent in varying amounts from January, 2012 to August, 2012 and by August, 2012 the amount of unpaid rent was \$3,060.00. As a result of the unpaid rent the Landlord gave the Tenant a 10 Day Notice to End Tenancy for unpaid rent on August 6, 2012. Further the Landlords said the Tenants have not paid the September, 2012 rent of \$1,300.00 as well. The Landlords said if their application is successful they are requesting an Order of Possession for as soon as possible and the Landlords said they are requesting a total of \$4,360.00 of unpaid rent.

The Landlord also said they are seeking to recover the \$50.00 filing fee for this proceeding. The Landlords said their total claim is for \$4,360.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$4,410.00.

The Tenant said she was not sure if there is unpaid rent and if there is she did not know how much unpaid rent there is. The Tenant said she has not kept track of the rent payments and the male Tenant may have made them. The Tenant said the male Tenant is living in the unit at this time and she is living elsewhere due to issues between her and the male Tenant.

The Tenant said she understood there was unpaid rent when she received the 10 Day Notice to End Tenancy for Unpaid Rent on August 6, 2012, but she decided to contest the Notice, because she did not know how much rent was unpaid.

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 Tenant has not paid the overdue rent and the Tenant did not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenant's application to Cancel the Notice to End Tenancy for Unpaid Rent, as she agrees that there is some unpaid rent that has been withheld from the Landlord.

I accept the Landlord's testimony and evidence that there is unpaid rent in the total amount of \$3,060.00 from the 10 Day Notice to End Tenancy and \$1,300.00 of unpaid rent from September, 2012, for a total amount of unpaid rent of \$4,360.00. Consequently, I find for the Landlords and award the Landlords a monetary claim for unpaid rent of \$4,360.00.00.

Further, I find that the Tenants have not paid the overdue rent and have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

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As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$4,360.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$4,410.00
Less:	Security Deposit	\$ 1,100.00	
	Subtotal:		\$1,100.00
	Balance Owing		\$ 3,310.00

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$3,310.00 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 to Cancel the Notice to End Tenancy 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