



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to keep the security and or pet deposit as partial satisfaction of their claim.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be issued an Order of Possession?
2. Should the Landlords be issued a Monetary Order?

Background and Evidence

The parties entered into a written tenancy agreement that began on October 1, 2011 and switched to a month to month tenancy after October 1, 2012. Rent was payable on the first of each month in the amount of \$900.00 and on September 25, 2011 the Tenants paid \$450.00 as the security deposit.

The Tenants submitted 30 pages of evidence which included, among other things, copies of: their written statement, deposit receipts, Canada Post receipts, an electrical inspection report, e-mails and written notes between the Landlords and Tenants, a receipt for payment of the security deposit, and a 10 Day Notice issued September 6, 2012.

The Landlords submitted that the Tenants continue to reside in the rental unit and they gave the Landlords written notice to end their tenancy effective October 31, 2012. The Tenants paid a total of \$800.00 towards September 2012 rent and have not paid anything for October 2012. A 10 Day Notice to end tenancy was served to the Tenants by registered mail on September 7, 2012.

The Tenants stated they received the 10 Day Notice on September 19, 2012 and confirmed that they did not make an application to dispute the Notice. The Tenants advised that they had a conversation with the Landlord J.I. and that he agreed to allow them to stay in the unit for October, without paying rent, if they agreed not to bring a claim against the Landlords.

The Landlord M.W. confirmed that J.I. had a conversation with the Tenants but that they did not reach an agreement that involved them not paying their rent. She pointed out that nothing was agreed to in writing; however, they did receive a letter from the Tenant which had numerous other issues listed which were not previously discussed or agreed to. The Landlords are seeking an Order of Possession for October 31, 2012 and a Monetary Order for the unpaid rent.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlords would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However, when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. In cases such as these the terms provided in the written tenancy agreement prevail.

Order of Possession - I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **September 29, 2012** and must vacate the rental unit to which the notice

relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent for September 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. The evidence supports the Tenants paid \$800.00 towards September rent leaving a balance due of \$100.00. Accordingly, I award the Landlords **\$100.00** in unpaid rent.

Loss of rent – As noted above this tenancy ended **September 29, 2012**, in accordance with the 10 Day Notice; therefore, I find the Landlord is seeking loss of rent for October 2012 given that the Tenants have failed to pay anything and are still occupying the unit.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$900.00** for loss of October 2012 rent.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent for September 2012	\$ 100.00
Loss of Rent for October 2012	900.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 1,050.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$ 600.00</u>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **October 31, 2012 at 1:00 p.m. after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been awarded a Monetary Order for **\$600.00**. This Order is legally binding and must be served upon the Tenants.

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: October 25, 2012.

Residential Tenancy Branch