

DECISION

Dispute Codes

For the tenants: CNC MNDC RP RR
For the landlord: OPR MNR MNSD 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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants applied to cancel a notice to end tenancy for cause, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

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 evidence orally and in documentary form prior to the hearing, and make submissions to me.

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 and Procedural Matters

At the outset of the hearing, the landlord disputed being aware or served with the tenants’ application for dispute resolution. As a result, the landlord was prepared to accept that the tenant disputed the 10 Day Notice, and I dismissed the remainder of the tenants’ application under section 2.3 of the Rules of Procedure as it was not closely enough related to the dispute of the 10 Day Notice. The tenants are at liberty to re-apply for their monetary claim.

The tenants stated during the hearing that they were disputing the 10 Day Notice To End Tenancy for Unpaid Rent (the “10 Day Notice”) and not a Notice to End Tenancy

for Cause. As a result, the tenant's application was amended as they made an error in the type of Notice they were applying to cancel. I find it reasonable that this error could be corrected as there was no Notice for Cause served on the tenants, only a 10 Day Notice.

The landlord referred to a prior application made by the landlord in November 2012. That decision was read during the hearing and it was determined that the landlord's previous application for October and November 2012 rent has already been considered by a previous Arbitrator and dismissed on November 14, 2012. The file number for that decision has been included on the cover page of this decision for ease of reference.

The parties were advised that due to the legal principle of *Res Judicata*, I am unable to re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

"...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

In light of the above, I have not re-heard the matters already dealt with under the previous application. In the November 14, 2012 decision, the landlord applied for October and November 2012 rent, so as a result, rent for those months have not been considered in this decision.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent for December 2012 and January 2013?
- What should happen to the tenants' security deposit?

Background and Evidence

A month to month tenancy agreement began on January 1, 2010. Monthly rent in the amount of \$795.00 was due on the first day of each month and was increased during the course of the tenancy to \$829.00 per month. The tenant's paid a security deposit of \$362.50 at the start of the tenancy.

The tenants confirmed that they were served with a 10 Day Notice and disputed it within 5 days as required by the 10 Day Notice. The 10 Day Notice was dated December 6, 2012 and had an effective vacancy date as December 16, 2012. The tenants stated that they tried to pay monthly rent, however, the landlord refused to accept rent. The landlord disputed the testimony of the tenants by indicating that he did not recall being offered rent for December 2012.

The tenants were asked if they still had their rent to pay the landlord. The tenants confirmed that they did not have the rent as they have already spent it.

The landlord is seeking \$829.00 in unpaid rent for December 2012, and \$829.00 in unpaid rent for January 2013. The landlord is also seeking the recovery of the filing fee in the amount of \$50.00.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I prefer the evidence of the landlord as the tenants confirmed that after the landlord allegedly refused to accept their rent, they spent their rent money and no longer had it available to the landlord. I do not find it reasonable that the tenants could expect to live in a rental unit without have to pay rent.

Section 26 of the *Act* requires that tenants pay rent when it is due. I find that the tenants failed to pay rent for the months of December 2012 and January 2013 and breached section 26 of the *Act* as a result. Therefore, **I find** the landlord has established a monetary claim in the amount of **\$1,658.00** comprised of \$829.00 in unpaid rent for December 2012 and \$829.00 for January 2013.

As the landlord was successful in his application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$1,708.00** based on the following:

Unpaid December 2012 rent	\$829.00
Unpaid January 2013 rent	\$829.00
Filing fee	\$50.00
Subtotal	\$1,708.00
<i>(Less security deposit of tenants which has accrued \$0.00 in interest)</i>	<i>- (\$362.50)</i>
Total owing balance owing to landlord by tenants	\$1,345.50

I authorize the landlord to retain the full security deposit of \$362.50 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance owing to the landlord in the amount of **\$1,345.50**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the landlord has proven his claim I find the landlord is entitled to an order of possession effective **two days** after service upon the tenants as the effective date on the 10 Day Notice as already lapsed. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Conclusion

I find that the landlord has proven his claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find the landlord has established a total monetary claim in the amount of \$1,708.00. I authorize the landlord to retain the full security deposit of \$362.50 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance owing to the landlord in the amount of **\$1,345.50**. This order must be served on the tenants and 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: January 14, 2013