



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, FF
Tenants: O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought return of their security deposit.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

The tenants submitted that, despite their Application indicating that they were seeking “other” they actually sought return of their security deposit. I advised the tenants that their Application for return of the security deposit was premature and that they had not indicated that they sought return of the deposit on their Application so I dismiss this portion with leave for the tenants to reapply at a future date.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 1, 2005 for a month to month tenancy beginning on May 1, 2005 for the monthly rent of \$600.00 due on the 1st of each month and a security deposit of \$300.00 was paid. The tenancy agreement allows for late fees of up to \$20.00 for failure to pay rent on time;
- Copies of several Notice of Rent Increases under the Residential Tenancy Act leading to the latest increase that increase the rent to \$695.00 effective January 1, 2013; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 3, 2013 with an effective vacancy date of January 7, 2013 due to \$795.00 in unpaid rent.

The landlord testified the tenants failed to pay the full rent owed for the month of December 2012 and January 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on January 3, 2013..

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord seeks compensation for the rent for December 2012 and January 2013 and late fees for both months.

The tenants agree they owe the landlord \$80.00 for December 2012 but they do not agree with the late fees. The tenants also submit that they gave the landlord their notice to end the tenancy on December 31, 2012 with an effective date of January 31, 2013.

The tenants submit that they gave their notice because the landlord has failed to deal with issues in the rental unit such as a mould issue; failure to install back stairs; incomplete skirting; main entry stairs rotten; flooring hazards and over all wear and tear. The tenants notice indicates that they are withholding rent for January 2013.

The landlord states the tenants did not provide this notice until January 1, 2013 and therefore it is late notice and he seeks the payment of rent for February 2013.

Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month

after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

From the testimony provided, I find the tenants did not notify the landlord in writing of a breach of a material term of the tenancy and so cannot apply Section 45(3) to end their tenancy. Further, even if the tenants had provided the landlord with their notice to end the tenancy Section 26 of the *Act* requires that a tenant pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 3, 2013 and the effective date of the notice is amended to January 13, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As to the landlord's request for rent for February 2013, I find this portion of the landlord's Application is premature as the due date for rent for February has not yet occurred and the landlord may still be able to reduce some losses by renting the unit for some portion or all of the month.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$865.00** comprised of \$775.00 rent owed; \$40.00 late fees; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$310.62 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$554.38**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As I have dismissed the tenant's Application seeking their security deposit I find they are not entitled to recover their filing fee from the landlord and I dismiss this portion of their Application.

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: January 28, 2013

Residential Tenancy Branch

