



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to reduce rent. The hearing was conducted via teleconference and was attended by the male tenant and the landlord

During the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in their Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to Sections 46 and 65 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in the portion of their Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The tenancy began in August 2012 as a month to month tenancy for the monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$325.00 paid.

The tenant submits that the landlord refused to turn the heat on in the rental unit and had only supplied heaters to the tenants that were unsafe and so in December 2012 the tenants paid the landlord \$500.00 rent.

The landlord submits the tenants have paid only \$400.00 per month for January and February 2013 as well as the \$500.00 for December 2012.

The tenant submits that on February 1, 2013 the landlord signed an agreement with the tenants that they could pay \$400.00 rent and that they would vacate the rental unit at the end of February.

Analysis

Section 26 stipulates that a 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.

Authority under the *Act* to deduct all or a portion of the rent is allowed only if the tenants had an order from an Arbitrator allowing them to do so; they had paid for emergency repairs for which the landlord has refused to reimburse them or their security deposit was in an amount over what is allowed under the *Act*.

From the tenant's testimony he has provided no indication that they had authority under the *Act* to withhold any amount of rent.

In addition, I find the document referred to by the tenant as an agreement between the parties for rent to be in the amount of \$400.00 is, in fact, a rent receipt dated February 1, 2013 from the landlord to the tenants acknowledging receipt of rent in the amount of \$400.00 for the month of February.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As I have found that the tenants had no authority under the *Act* to withhold rent and there was no valid agreement between the parties for a reduction in rent for any period during the tenancy I dismiss the tenants' Application.

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.

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: February 27, 2013

Residential Tenancy Branch