



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR O
For the landlord: OPR MNR MNDC 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 tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities and “other” although details of “other” were not clear in the tenants’ application.

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord and two of the three tenants, JS and DS attended the hearing. 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. The parties confirmed that they received the evidence packages from the other party and had the opportunity to review the evidence prior to the hearing. I find that the parties were served in accordance with the *Act*.

Preliminary Matter

At the outset of the hearing, the tenant requested to withdraw his claim for “other” which he indicated related to compensation for repairs to the rental unit that were not completed by the landlord. The tenant is at liberty to re-apply for that portion of his claim as a result, however, withdrawing that portion of his claim does not extend any time limits under the *Act*.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agree that a month to month tenancy began on July 7, 2012. Monthly rent in the amount of \$800.00 is due on the first day of each month. The parties agreed that a security deposit was not paid at the start of the tenancy. The parties agreed that monthly rent did not include utilities.

The landlord is seeking \$1,734.09 comprised of \$800.00 in unpaid February 2013 rent, anticipated loss of March 2013 rent of \$800.00 and \$134.09 in unpaid utilities. Tenant JS did not dispute that February 2013 rent was unpaid. Tenant JS did not dispute the unpaid utilities in the amount of \$134.09. The tenants did dispute that March 2013 rent was due as it was not yet March and they were planning to vacate the rental unit. The landlord submitted invoices for unpaid utilities in evidence supporting the amount owing of \$134.09.

The tenants disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The parties agreed the 10 Day Notice dated February 1, 2013 was for unpaid rent of \$800.00 due February 1, 2013.

The parties also confirmed that a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) for repeated late rent payments dated January 30, 2013 was received by the tenants on January 30, 2013 and has an effective vacancy date of February 28, 2013.

During the hearing, tenant JS confirmed that rent for November 2012, December 2012 were paid on or about the fifth day of each month and that January 2013 rent was paid

on January 8, 2013. Tenant JS acknowledged that he was aware that the rent was due on the first day of each month.

A copy of the tenancy agreement, 1 Month Notice, 10 Day Notice, utility bill invoices, and receipts for rent payments were submitted in evidence.

Analysis

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

10 Day Notice – The landlords issued a 10 Day Notice on February 1, 2013 for \$800.00 rent due on February 1, 2013. The tenant disputed that notice. **I find** that the 10 Day Notice is invalid as the tenants had until midnight of February 1, 2013 to pay the rent which made the 10 Day Notice premature. Therefore, **I cancel the 10 Day Notice** as the landlord should have waited until at least February 2, 2013 before serving that Notice.

1 Month Notice to End Tenancy for Cause due to repeated late rent payments – The tenants agreed that the 1 Month Notice was received on January 30, 2013 and had an effective vacancy date of February 28, 2013. Tenant JS, confirmed that rent was paid late in November 2012, December 2012 and January 2013. The tenants did not dispute the 1 Month Notice. **I find** that 1 Month Notice is valid and that pursuant to section 47(5) of the *Act*, that by failing to dispute the 1 Month Notice, that the tenants are conclusively presumed to have accepted that the tenancy is ending on February 28, 2013. Therefore, **I grant** the landlord an order of possession **effective February 28, 2013 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Landlord's claim for unpaid February 2013 rent and unpaid utilities – Tenant JS agreed that rent for February 2013 in the amount of \$800.00 was not paid. Tenant JS also agreed that there were unpaid utilities in the amount of \$134.09. Section 26 of the *Act* requires that tenants pay rent on the day that it is due in accordance with the tenancy agreement. **I find** that the tenants breached section 26 of the *Act* by failing to pay February 2013 rent in the amount \$800.00 and failed to pay \$134.09 in unpaid utilities. Therefore, **I find** the landlord has met the burden of proof and is entitled to monetary compensation of **\$934.09** comprised of \$800.00 for unpaid February 2013 rent, and \$134.09 for unpaid utilities.

Landlord's claim for loss of March 2013 rent – As it is not yet March 1, 2013, I find this portion of the landlord's claim to be premature. Therefore, **I dismiss** the landlord's claim for the loss of March 2013 rent **with leave to reapply**.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$984.09** comprised of \$800.00 in unpaid February 2013 rent, \$134.09 in unpaid utilities, and the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$984.09**. 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.

Conclusion

I find that the landlord has proven her claim and is, therefore, entitled to an order of possession **effective February 28, 2013 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord is entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of \$984.09. 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: February 28, 2013

Residential Tenancy Branch

