



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, RR

Introduction

This hearing dealt with an application by the tenant seeking to have a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside and an order allowing the tenants a rent reduction. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to have the Notice Set Aside?

Are the tenants entitled to a rent reduction?

Background and Evidence

The following facts were canvassed and agreed to at the outset of the hearing:

The tenancy began on or about October 1, 2012. Rent in the amount of \$1500.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$750.00.

The landlord gave the following testimony:

The landlord issued a notice to end tenancy on February 20, 2013 by personally serving one of the tenants. The Notice indicates a rental shortfall of \$2062.00 for the months up to and including February 2013. The landlord stated the tenant's have yet to pay the

rent for March. The landlord stated that the total amount of outstanding rent is \$4612.50. The landlord made an oral request for an order of possession.

The tenants gave the following testimony:

The tenants agree that they have not paid the March rent that is due but feel they are justified in withholding the amount. The tenants filed to dispute this Notice on February 27, 2013. The tenants stated that they have withheld the rent as they have made multiple requests to have some repairs conducted in their unit. The tenant's dispute the amount sought by the landlord and were adamant that the amount outstanding is \$1500.00. The tenants stated they are willing to pay the amount but want the landlord to sign a new agreement with new terms and to conduct a condition walk thru as part of the new agreement. The tenants also seek a rental reduction as they feel the landlord has not maintained the unit properly.

Analysis

Both parties provided documentation that was considered in this hearing.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice within five days and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In addition to the late filing, in the tenant's own testimony they acknowledged and confirmed that they had withheld the rent without an order from the Residential Tenancy Branch. Section 26 of the Act addresses this issue.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has not made an application for this hearing and therefore has leave to apply for a monetary order if they so choose.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 20, 2013 remains in full effect and force.

The tenant's application is dismissed.

Conclusion

The landlord is granted an order of possession.

The tenant's application is dismissed in its entirety without leave to reapply.

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: March 27, 2013

Residential Tenancy Branch

