



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenants: MT, CNR, AAT, OPT, PSF, RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy and for orders to have the landlord allow the tenant access to the rental unit; provide services and repairs and an order of possession. The hearing was conducted via teleconference and was attended by the landlord's agent and the female tenant.

The original hearing was set for March 1, 2013 but was adjourned at the tenant's request as she was not able to participate in the hearing at that time due to a medical treatment.

As the tenants filed their Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy 4 days after receiving the notice I find they have filed their Application within the required timelines and do not need additional time to submit the Application. I amend the tenants' Application to exclude the matter of additional time.

Further, as the tenants currently have possession of the rental unit there is no need for them to obtain an order of possession and I amend their Application to exclude this matter.

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 tenant 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 cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order requiring the landlord provide services required by law; to complete repairs; and to allow the tenant and their guests access to the rental unit, pursuant to Sections 46, 30, and 32 of the *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 March 25, 2011 for a 1 year and 1 day fixed term tenancy beginning on April 1, 2011 that converted to a month to month tenancy on April 2, 2012 for the monthly rent of \$1,050.00 due on the 1st of each month and a security deposit of \$525.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February with an effective vacancy date of February 14, 2013 due to \$1,050.00 in unpaid rent.

The landlord testified the tenants failed to pay the full rent owed for the month of February 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on February 4, 2013 at 4:56 p.m. and that this service was witnessed by a third party.

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 but did apply to dispute the Notice to End Tenancy within five days.

The tenants submit that they had been unable to pay rent for February 2013 when it was due because of emergency health issues and medical costs that resulted. The parties agree the tenants paid February 2013 rent on February 25, 2013 and that the landlord issued a receipt dated February 27, 2013 for use and occupancy only. The parties also agree the tenants have not paid March 2013 rent.

Analysis

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.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution. And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

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. A right to deduct under the *Act* includes: an overpayment of a security or pet damage deposit; reimbursement for emergency repairs that the tenant has had to pay and the landlord refuses to reimburse; or an order from an Arbitrator allowing the deduction.

As the tenants have provided no evidence they have authority under the *Act* to deduct all or a portion of rent, 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*. As a result, I find the Notice to End Tenancy to be effective and enforceable.

As I have found the Notice to End Tenancy to be valid, I dismiss the tenants' Application for Dispute Resolution seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. In addition, as the balance of the tenant's Application seeks remedies that would only be applicable if the tenancy continued I dismiss the other issues raised in 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,100.00** comprised of \$1,050.00 rent owed 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 \$525.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$575.00**.

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.

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 13, 2013

Residential Tenancy Branch

