



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNDC, RP, FF
	Landlord OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the security deposit and to recover the filing fee for this proceeding.

The Tenants filed for compensation for loss or damage under the Act, regulations or tenancy agreement, for repairs to the unit site or property and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on March 12, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail March 1, 2013 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the Tenants said they did not receive the 10 Day Notice to End Tenancy for unpaid rent dated March 2, 2013, but they want to amend their application to include an Order to cancel the Notice to End Tenancy for unpaid rent. I accepted the Tenants' request to amend their application as the Notice to End Tenancy was dated after the Tenants application was filed.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the security deposit as partial payment of unpaid rent?

Tenant:

1. Are the Tenants entitled to an Order to Cancel the Notice to End Tenancy?
2. Have the Tenants had a loss or damage and if so how much?
3. Are the Tenants entitled to compensation and if so how much?
4. Are there repairs to be done to the unit, site or property?

Background and Evidence

This tenancy started on August 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2014. The tenancy agreement says rent is \$1,500.00 per month payable in advance of the 1st day of each month. The Tenants said they had a verbal agreement with the Landlord that rent was reduced to \$1,250.00 and that is what they have been paying since September, 2012. The Landlord said they did have an agreement that rent would be \$1,250.00, but it is back at the amount in the tenancy agreement of \$1,500.00 since January 1, 2013. The Tenants paid a security deposit of \$600.00 before August 1, 2012.

The Landlord said the Tenants have not paid \$500.00 of rent for the month of January, 2013, and \$1,500.00 for each month of February and March, 2013 for a total of \$3,500.00 of unpaid rent. The Landlord said this is based on a monthly rent of \$1,500.00 as the tenancy agreement states. The Landlord continued to say that because the Tenants did not pay their rent she issued a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2013. The Landlord said her husband personally delivered it to the male Tenant at 6:30 p.m. on March 2, 2013. The Landlord said there is a Proof of Service document that is signed by a witness. The male Tenant denied that he received the 10 Day Notice to End Tenancy and both Tenants said they paid the January of \$1,250.00 and February rent of \$1,250.00, but have not paid the March, 2013 rent of \$1,250.00. The female Tenant said they did not pay the March, 2013 rent because the Landlord was not repairing things in the rental unit that need repairs.

The Landlord said the Tenants have not paid the rent and she requested an Order of Possession for as soon as possible.

The Tenants continued to say that they are requesting \$2,500.00 as compensation for the conditions that they have lived in since the tenancy began. The Tenants said the Landlord says they will fix things, but nothing ever happens and they are frustrated.

The Tenants said they do not have any evidence that they paid the rent in January or February, 2013 or evidence to back up any of the compensation claims that they are making.

The Landlord said she submitted receipts for repair work, materials and a paid receipt from the Tenant for work that he had done on the rental unit for the Landlord. The Tenants said he had done work for the Landlord, but he has back issues so he could not continue the work on the house.

The Landlord said in closing that the tenancy agreement says the rent is \$1,500.00 so that is what she is requested for rent per month.

The Tenant said they have paid the January and February, 2013 rent, but have not paid the March, 2013 because the Landlord is not making repairs to the unit.

It should be noted that the Tenants have not submitted any evidence to show the rent was reduced or that they requested any repairs to be done in writing.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy on the day it is personally delivered or on March 2, 2013. I accept the Landlord's evidence of a Proof of Service document signed by a witness and a copy of the 10 Day Notice to End Tenancy for unpaid rent dated March 2, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 7, 2013. As the Tenants' application is dated February 28, 2013, they had not received the Notice to End Tenancy dated March 2, 2013; therefore I accepted the Tenants amendment to their application to include a request to Cancel the Notice to End Tenancy dated March 2, 2013. I find that the Tenants have not paid the overdue rent and have not been successful in requesting an order to cancel the Notice to End Tenancy for unpaid rent as the Tenants agree there is unpaid rent. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord and the Tenants established a reduced rental amount by verbal agreement of \$1,250.00 as this is the amount both parties said was paid from September, 2012 to January, 2013. Consequently I find the Landlord has established

grounds that there is unpaid rent of \$250.00 for January, 2013, \$1,250.00 for each month of February and March, 2013 for a total amount of unpaid rent of \$ \$2,750.00.

As the Tenants have not provided any evidence to corroborate their claims and as the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I dismiss the Tenants application without leave to reapply.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the filing fee \$50.00 which they have already paid.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,750.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,800.00
Less:	Security Deposit	\$600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$2,200.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,200.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed 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 25, 2013

Residential Tenancy Branch

