



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR and FF
Tenant: CNR, RR, O and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application OF March 4, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on March 3, 2013. The landlord also sought a monetary award for the unpaid rent and recovery of the filing fee for this proceeding.

By application of March 7, 2013, the tenant sought to have the Notice to End Tenancy set aside and an order for rent abatement for restriction of their use of laundry facilities and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties confirmed that the tenants had vacated the rental unit on March 15, 2013.

Therefore, the requests for an Order of Possession and to have it set aside are dismissed as moot.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as requested?

Are the tenants entitled to rent abatement for the limiting of facilities?

Background and Evidence

This tenancy began on February 14, 2012 and ended on March 15, 2013. Rent was \$800 per month and the landlord holds a security deposit of \$400 paid at the beginning of the tenancy.

The parties said that there was a written rental agreement, but neither has submitted it into evidence. The tenants stated that they had never been provided with a copy which is a breach of section 13(3) of the *Act* requirement that the landlord to provide a copy to the tenants within 21 days of signing.

During the hearing, the landlord stated that he had issued the notice to End Tenancy when the tenants had failed to pay the \$800 rent that was due on February 16, 2013. The landlord's application requested a monetary award of \$1,600, half of which he stated was intended to cover the loss of rent from the period from March 16, 2013 to April 15, 2013. However, the landlord's application did not ask for damage or loss under section 7 of the *Act*.

The tenant stated that the landlord had been urging them to move in February and they had advised him that they were attempting to buy their own property and anticipated leaving in March 2013. However, as their pending offer to purchase was conditional, they had been unable to provide a firm day. They confirmed by written notice of March 10, 2013 that they would vacate on March 15, 2013 as requested in the Notice to End Tenancy.

The female tenant stated that she had paid \$700 of the rent in cash on February 18, 2013, withholding \$100 over a dispute about use of laundry facilities. She said she offered the landlord the balance after consulting with the branch and being advised that rent cannot be withheld, but he refused to accept it pending the present hearing.

The tenant submitted a copy of her bank statement for February 2013 showing a cash withdrawal of \$1,000 on February 18, 2013.

The landlord fervently denied having received the \$700 and noted that the tenant has submitted receipts for every other rent payment which he believes adds credence to his position that he always issues receipts for rent without exception.

The female tenant gave evidence that because of limitations placed on the use of laundry facilities, she had had to use commercial laundry facilities for approximately two months. The tenants have two children, a toddler and an infant.

She submitted a letter dated March 10, 2013 from the proprietor of the laundromat stating that the tenant had been there three times a week since January 2013, and the tenant stated that the dryer had been down for repairs for two weeks in the previous summer. The landlord stated that had had not denied use of the laundry facilities but had simply reduced use to twice a week.

Analysis

In the absence of definitive proof that the tenants paid \$700 of the rent on February 18, 2013, I find that the tenants have not proven by way of third party or documentary evidence that the rent was paid. On the basis of the consistent issuance of receipts by the landlord and the Notice to End Tenancy, I grant the benefit of the doubt to the landlord and allow his claim.

With respect to the landlord's claim for loss of rent for March 16 to April 15, 2013, I find that the landlord did not specify loss or damage under section 7 of the *Act* on his application, had been urging the tenants to vacate, and provided no proof of efforts to minimize his loss, as required under section 7(2) of the *Act*, by advertising the rental unit. Therefore, the claim is dismissed without leave to reapply..

On the question of restricting the tenants' use of laundry facilities, section 27 of the *Act* states that a landlord cannot restrict a service or facility that constitutes a material term of the rental agreement. I prefer the evidence of the tenants and find that the landlord did restrict their use, a substantial inconvenience given that the tenants had two very young children. Accordingly, I find that the tenants are entitled to an award of \$200.

As I find the actions of both parties contributed to this dispute, I find each should remain responsible for their own filing fees.

As authorized under section 72 of the *Act*, I hereby order that the landlord shall retain the security deposit in set off against the unpaid rent.

Thus, I find that accounts balance as follows:

Rent for February 16 to March 15, 2013	\$800.00
Less credit to tenants for restrictions on laundry use	- 200.00
Less \$400 security deposit retained by landlord against rent	<u>- 400.00</u>
TOTAL balance remaining owed to landlord by tenants	\$200.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$200.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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

