



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC MNSD FF
 CNR ERP RR FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenants' request to cancel the Landlords' Notice to End Tenancy issued for unpaid rent and their request to recover the filing fee; and I dismiss the balance of the Tenants' claim with leave to re-apply.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on March 25, 2013, seeking an Order of Possession and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on March 15, 2013, seeking an Order to cancel the Notice to end tenancy for unpaid rent, order the Landlord to make emergency repairs to the unit, to allow the Tenants reduced rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the

hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy issued March 12, 2013, be upheld or cancelled?
2. If upheld, should the Landlords be granted an Order of Possession?
3. Should the Landlords be issued a Monetary Order?

Background and Evidence

The following facts were reviewed during the course of this proceeding and were not in dispute:

- The Tenants occupy the rental property based on a verbal tenancy agreement that began in approximately May 2005;
- Rent is payable on the first of each month in the amount of \$1,550.00 which is partially paid by Income Assistance for C. S-W. in the amount of \$400.00 each month. The remaining Tenants pay \$1,150.00 each month ;
- On or before occupancy in May of 2005 the Tenants paid \$725.00 as the security deposit;
- On March 12, 2013, the Tenants were personally served a 10 Day Notice for unpaid rent of \$1,150.00 that was due on March 2013;
- The Tenants continue to occupy the rental unit and have not paid the \$1,150.00 for March 2013 or the \$1,150.00 owing for April 2013. The payments from Income Assistance have continued.

The Tenant testified that they refused to pay the balance owing of rent because they wanted the Landlord to make repairs. They have not been issued an Order authorizing them to stop paying rent and they have not paid to have any emergency repairs completed.

The Tenant stated that they had offered to pay approximately \$700.00 to the Landlord but that they were told they would still be evicted. The Tenant argued that they could not afford to pay the full amount of rent because they could no longer rent out the basement because of the required repairs.

The Landlord stated they are seeking an Order of Possession upon two days of service and the monetary order for unpaid and loss of rent as applied.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement. Section 46 of the Act provides that if a tenant fails to pay their rent the Landlord can issue a 10 Day Notice to end the tenancy. There is no provision in the Act that provides a tenant the ability to avoid or stop paying rent because they want the landlord to conduct repairs. Rather, the Act provides that a tenant may make application for dispute resolution to seek orders to have the landlord repair the rental unit and may only reduce or stop paying rent by order of the director.

The Tenants received the 10 Day Notice on March 12, 2013, and filed their application to dispute the Notice on March 15, 2013, stating they stopped paying rent because they want the Landlords to conduct repairs to the rental unit, which I find to be a breach of section 26 of the Act.

The effective date of the Notice is **March 22, 2013**, in accordance with section 46 of the Act. The Tenants did not pay the rent within five days, therefore, the tenancy ends on the effective date of the Notice and the Tenants must vacate the rental unit to which the notice relates, pursuant to section 46 of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlords claimed unpaid rent of \$1,150.00 which was due March 1, 2013. The Tenants failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlords a monetary award for March 2013 unpaid rent of **\$1,150.00**.

As noted above this tenancy ended **March 22, 2013**, in accordance with the 10 Day Notice. The Tenants are still occupying the unit which means the Landlords will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlords are entitled to use and occupancy and any loss of rent for the entire month of April 2013, in the amount of **\$1,150.00**.

The Landlords have been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent for March 2013	\$1,150.00
Use and Occupancy & loss of rent for April 2013	1,150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,350.00
LESS: Security Deposit \$725.00 + Interest 25.67	<u>- 750.67</u>
Offset amount due to the Landlord	<u>\$1,599.33</u>

Tenant's claim

As noted above I have upheld the 10 Day Notice. Accordingly, I dismiss the Tenant's request to cancel the Notice, without leave to reapply.

The Tenants' request to order the Landlord to make emergency repairs and to allow the Tenants reduced rent for repairs, services, or facilities agreed upon but not provided, were previously dismissed, with leave to re-apply.

The Tenants have not been successful with their application; therefore, they must bear the burden of the cost to file that application.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been awarded a Monetary Order in the amount of **\$1,599.33**. This Order is legally binding and must be served upon the Tenants.

The Tenants' application for emergency repairs and to allow the Tenants reduced rent repairs, services, or facilities agreed upon but not provided, is dismissed, with leave to re-apply.

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: April 12, 2013

Residential Tenancy Branch