



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNDC FF

For the tenant: CNR MNDC OLC RP LRE LAT RR FF O

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, to suspend or set conditions on the landlord’s right to enter the rental unit, for authorization to change the locks to the rental unit, for authority to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the filing fee, and “other” although details of “other” in addition to what the tenant had already requested in their application was not clear.

The landlords and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In the matter before me, the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to cancel the Notice to End Tenancy. I find that not all the claims in the tenant's Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice to End Tenancy and the tenant's application to recover the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply. As this matter consists of a cross-application by the landlords, the landlords' application is also being considered.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agree that a month to month tenancy began on August 1, 2012. Monthly rent in the amount of \$1,100.00 is due on the first day of each month. The parties disputed whether a security deposit and pet damage deposit were paid. The landlords stated that no deposits were paid by the tenant, while the tenant stated that he paid a \$550.00 security deposit and \$550.00 pet damage deposit at the start of the tenancy. The tenant did not provide evidence of those deposits such as a receipts or bank statements.

The landlords are seeking \$3,300.00 in unpaid rent for the months of February 2013, March 2013 and April 2013. The tenant stated that he paid February 2013 rent in cash on February 3, 2013 but did not submit any documentary evidence to support his claim such as a bank statement, receipt or witness statements. The landlords disputed the tenant's testimony by stating that the tenant failed to pay any rent since January 2013.

The tenant did acknowledge that rent for March 2013 and April 2013 have not been paid as he lost his job and has been unable to pay rent as he has not received income assistance to date.

The tenant confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") from the landlords on March 2, 2013 and dated the same date. The tenant disputed the 10 Day Notice on March 6, 2013. The 10 Day Notice states that \$2,200.00 in unpaid rent was due on February 1, 2013 and March 1, 2013 and had an effective vacancy date for March 12, 2013.

During the hearing the tenant requested that the landlords permit him to remain in the rental unit until the end of April 2013, if he agreed to pay the \$3,300.00 in unpaid rent. The landlords did not agree to the tenant's proposal and are seeking an order of possession as soon as possible.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The landlords issued a 10 Day Notice on March 2, 2013 for \$2,200.00 comprised of \$1,100.00 rent due on February 1, 2013 and \$1,100.00 rent due on March 1, 2013. The tenant disputed that notice on March 6, 2013. Although there is dispute about February 2013 rent, the tenant did agree during the hearing that he failed to pay March 2013 and April 2013 rent.

I find that the 10 Day Notice is valid as the tenant confirmed that rent was not paid for March 2013 and was also not paid in April 2013. Therefore, **I dismiss** the tenant's application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice issued by the landlord which had an effective vacancy date of March 12, 2013 as it is valid. Therefore, **I grant** the landlords an order of possession for unpaid rent **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Landlords' claim for unpaid rent – The landlords testified that the tenant has failed to pay any rent since January 2013, and therefore owes \$1,100.00 for February 2013, March 2013 and April 2013. The tenant confirmed that he failed to pay rent for March 2013 and April 2013, however claims he did pay rent for February 2013 on February 3, 2013 in cash. The tenant failed to provide any documentary evidence in support of his

claim that he paid rent. The tenant did not submit any bank statements, receipts, or witness statements stating that rent was paid in cash to the landlords on February 3, 2013. Therefore, I find the tenant has failed to prove that rent for February 2013 was paid, and therefore I prefer and accept the testimony of the landlords that rent was not paid since January 2013 as it is consistent with the tenant stating that he could not afford rent due to his loss of employment. In addition, the tenant proposed to pay \$3,300.00 to the landlords if they would agree to allow him to remain in the rental unit until the end of April 2013 which I find supports that rent had not been paid as required in February 2013.

Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. **I find** that the tenant breached section 26 of the *Act* by failing to pay February 2013, March 2013, and April 2013 rent at \$1,100.00 per month for a total amount of rent owing of \$3,300.00. Therefore, **I find** the landlords have met the burden of proof and are entitled to monetary compensation of **\$3,300.00** in unpaid rent.

As the landlords' claim had merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

As the tenants' claim was dismissed, **I do not** grant the tenant the recovery of his filing fee.

I find that the landlords have established a total monetary claim of **\$3,350.00** comprised of \$3,300.00 in unpaid rent, plus the \$50.00 filing fee. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,350.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlords have proven their claim and are, therefore, entitled to an order of possession **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlords are entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of \$3,350.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 04, 2013

Residential Tenancy Branch

