



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, MNDC, FF
Tenants: CNC, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenants seeking to cancel two notices to end tenancy. The hearing was conducted via teleconference and was attended by the landlord and the female tenant.

The landlord had arranged for a witness to be available but she was not called to provide any testimony.

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 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 46 and 47 of the *Act*.

Background and Evidence

The parties agree the tenancy began on September 1, 2012 as a month to month tenancy for a monthly rent of \$1,250.00 with rent due on the 1st of each month with a security deposit of \$340.00 currently being held by the landlord.

Both parties provided into evidence the following documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on May 1, 2013 with an effective date of June 1, 2013 citing the tenants are repeatedly late paying rent and the tenants have breached a material term of the tenancy agreement and have failed to correct the situation within a reasonable time after a written notice to do so was provided to them; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on May 2, 2013 with an effective date of May 12, 2013 because \$1,770.00 in rent due on May 1, 2013 and \$237.00 in utilities that the landlord requested payment for on March 29, 2013 remains unpaid.

The landlord testified he had provided the tenants with a copy of utility bill on March 29, 2013 demanding payment for the utilities used by the tenants and that to date the tenants have not yet paid this amount. The landlord has provided a copy of the March 29, 2013 bill and an email from the utility provider indicating the amount due for the next period in an amount between \$288.00 and \$312.00 based on the same usage.

The landlord also testified the tenants have not paid the full amount of rent for April 2013 or any rent for May 2013. The tenant testified they had a verbal agreement with the landlord that they could work out the payment of rent because the male tenant had lost his employment and they were going to be seeking welfare. The landlord submits there was no such agreement but rather they indicated they couldn't pay and he indicated that he needed them to pay.

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.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal

terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. It is incumbent on the party making the claim that there is an agreement to provide sufficient evidence to establish the agreement exists.

In the case before me as the tenants can provide no additional support to their position that they had a verbal agreement with the landlord to delay payment of utilities or rent, I find they have failed to establish such an agreement exists.

Further, once the landlord issued the 10 Day Notice the tenants are obligated by law to make the payments as noted within the 15 days unless they have authority under the Act to withhold any payments. Authority under the Act would include having an order from the Residential Tenancy Branch stating the tenants could withhold rent; an overpayment of a security deposit; or for reimbursement for emergency repairs after following the requirements under the Act to try and obtain the reimbursement from the landlord.

As the tenants have no such authority to withhold rent I find that they were required to pay or at least attempt to pay the arrears of both rent and utilities within 5 days of receiving the landlord's 10 Day Notice to End Tenancy. As a result I find the landlord is entitled to end the tenancy in accordance with the 10 Day Notice issued on May 2, 2013.

As such, I dismiss the portion of the tenant's Application seeking to cancel the 10 Day Notice to End Tenancy. As I have determined the tenancy will end in accordance with the 10 Day Notice I dismiss the portion of the tenants' Application to cancel the 1 Month Notice to End Tenancy for Cause.

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 **\$2,345.00** comprised of \$1,770.00 rent owed; \$525.00 utilities 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 \$340.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,005.00**.

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: May 31, 2013

Residential Tenancy Branch

