



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MND MNR MNSD FF
For the tenants: CNR

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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to retain the tenants’ security deposit, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities.

The tenants and an agent for the landlord (the “agent”) 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.

The tenants confirmed that they received the evidence from the landlord and that they had the opportunity to review that evidence prior to the hearing. The tenants confirmed that they did not submit evidence in support of their own application or in response to the landlord’s application.

Preliminary and Procedural Matter

The landlord testified that in addition to the rent owed for April 2013, the tenants have subsequently not paid the rent for May 2013. As a result, the landlord requested to amend the application to include rent owed for May 2013. The landlord also stated that the tenants continue to occupy the rental unit which the tenants confirmed. As this request to amend the application does not prejudice the respondent tenants, as the tenants would be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$1,500.00, which is comprised of \$750.00 for April 2013 rent owed and \$750.00 for May 2013 rent owed.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A month to month tenancy agreement began on January 31, 2012. Monthly rent in the amount of \$750.00 was due on the first day of each month. The tenants paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The landlord is seeking \$1,500.00 in unpaid rent comprised of \$750.00 rent owing for April 2013 and \$750.00 rent owing for May 2013. During the hearing, the tenants confirmed that rent for April 2013 and May 2013 had not been paid. Later in the hearing, the tenants changed their testimony by claiming that their rent cheques are issued by the income assistance office and that the landlord refused to cash the cheques. The tenants did not submit any documentary evidence to support their claim. The landlord disputed that any rent was paid for April or May 2013 and stated that he has not refused to deposit any cheques to date.

The tenants confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") from the landlord dated April 2, 2013 which was posted to their door, two days later on April 4, 2013. The tenants disputed the 10 Day Notice on April 5, 2013. The 10 Day Notice indicates that \$750.00 in unpaid rent was due on April 1, 2013 and had an effective vacancy date for April 12, 2013.

Analysis

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

The landlord issued a 10 Day Notice on April 2, 2013 for \$750.00 in unpaid rent due April 1, 2013 by posting the 10 Day Notice to the tenants' door on April 2, 2013. The tenants received the 10 Day Notice on April 4, 2013 and disputed the 10 Day Notice on April 5, 2013 which is within the five day timeline permitted to dispute a 10 Day Notice.

During the hearing, the male tenant testified that rent for April 2013 and May 2013 had not been paid. Later in the hearing, the tenants changed their testimony, claiming that their rent cheques were issued by the income assistance office and alleged that the landlord failed to cash the rent cheques. The landlord disputed that any rent has been paid for April or May 2013. The landlord also disputed that he has refused to deposit any cheques to date. The tenants failed to provide any supporting evidence to support that a rent cheque was issued to the landlord by the income assistance office for April or May 2013 rent.

The landlord is seeking an order of possession for unpaid rent and is seeking a monetary order for unpaid rent, and authorization to retain the tenants' security deposit. **I find** that the 10 Day Notice is valid as the tenants confirmed during the hearing that rent for April 2013 and May 2013 was not paid. I do not accept the tenants' testimony as their testimony was inconsistent throughout the hearing. The tenants failed to provide any supporting evidence that the income assistance office issued the landlord rent cheques for April or May 2013. Therefore, I prefer the testimony of the landlord as the testimony of the landlord was consistent throughout the hearing.

Given the above, **I dismiss** the tenants' application in full due to insufficient evidence. **I uphold** the 10 Day Notice issued by the landlord which had an effective vacancy date of April 12, 2013 which automatically corrects under the *Act* to April 14, 2013 as it is valid. **I grant** the landlord an order of possession for unpaid rent **effective two (2) days after service on the tenants**. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord testified that the tenants have failed to pay rent for April 2013 and May 2013 for a total amount owing of \$1,500.00. The tenants confirmed this during the hearing and then eventually changed their testimony. 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 tenants breached section 26 of the *Act* by failing to pay April 2013 and May

2013 rent owing in the amount of \$1,500.00. Therefore, **I find** the landlord has met the burden of proof and is entitled to monetary compensation of **\$1,500.00** in unpaid rent.

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

The tenants' security deposit of \$375.00 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

I find that the landlord has established a total monetary claim of **\$1,550.00** comprised of \$1,500.00 in unpaid rent, plus the \$50.00 filing fee. **I authorize** the landlord to retain the tenants' full security deposit of \$375.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$1,175.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the tenants' application, without leave to reapply.

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

I find that the landlord is entitled to monetary order pursuant to section 67 of the *Act*, in the amount of \$1,175.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 03, 2013

Residential Tenancy Branch