



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, FF

Introduction

This hearing concerns an application by the tenants for cancellation of a 10 day notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is the lower level in a house where the upper level is also rented.

There is no written tenancy agreement in evidence for the tenancy which began in July 2009. Monthly rent of \$1,000.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected.

Subsequent to the last decision issued in the dispute between these same parties by date of April 24, 2013 (file # 794816), the landlord claims she issued a 1 month notice to end tenancy for cause dated April 28, 2013. The landlord testified that on April 29, 2013, she served the notice in-person on tenant "KR." A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 30, 2013. Reasons identified on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

However, the tenants testified that they received no such notice from the landlord and that, accordingly, they have not applied to dispute the 1 month notice.

Thereafter, arising from rent which allegedly remained unpaid when due on May 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated May 3, 2013. The notice was served by way of posting on the tenants' door on that same date. The tenants filed an application to dispute the notice on May 7, 2013. Further, the tenants testified that they have indeed paid all rent due for May 2013, and that the landlord is simply determined to end the tenancy by any means possible.

The parties agree that no rent has presently been paid for June 2013, and currently there is no application before me from the landlord.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act addresses **Opportunity to settle dispute**. Pursuant to this provision it was agreed as follows:

RECORD OF SETTLEMENT

- that the tenants will vacate the unit by no later than **Saturday, June 15, 2013**, and that an **order of possession** will be issued in favour of the landlord to that effect.

Following from this agreement, and in the absence of an application by the landlord, I make no findings with regard to either the 1 month notice to end tenancy for cause, or the 10 day notice to end tenancy for unpaid rent.

Based on the documentary evidence and testimony, the various aspects of the tenants' application for compensation and my findings around each are set out below. The landlord disputes all aspects of the tenants' application for compensation.

\$18,000: compensation for “grounds keeping and maintenance” (45 months x \$400.00 per month).

Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and broadly addresses this particular issue in dispute under the heading, PROPERTY MAINTENANCE.

In the absence of a written tenancy agreement, or any other documentary evidence related to agreements or understandings or communication between the parties during the tenancy, this aspect of the application is hereby dismissed.

\$1,000.00: roof debris cleaning.

In the absence of any documentary evidence related to communication between the parties in this regard during the tenancy, this aspect of the application is hereby dismissed.

\$2,000.00: cleaning upstairs & disposing of garbage for rental unit and property.

For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$100.00: transporting Landlord’s grandson.

In the absence of any evidence that this transport was provided on something other than a voluntary basis, this aspect of the application is hereby dismissed.

\$3,800.00: anticipated moving costs.

These costs have not presently been incurred. Despite this, the parties have negotiated a mutually agreeable end date to the tenancy. In the result, I am unable to conclude that the tenants’ moving expenses ought to be borne by the landlord. This aspect of the application is therefore hereby dismissed.

\$100.00: filing fee.

Recognizing that the parties negotiated an end date to tenancy during the hearing, I find that the tenants have established entitlement to recovery of **\$50.00**, which is half the amount claimed. I hereby issue a **monetary order** in favour of the tenants to that effect.

Finally, as the end of tenancy nears, the attention of the parties is drawn to the following particular sections of the Act:

Section 29: **Landlord’s right to enter rental unit restricted**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Saturday, June 15, 2013**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

With regard to recovery of a portion of their filing fee, pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$50.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and 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: June 3, 2013

Residential Tenancy Branch