



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR and FF
Tenants: CNR and OLC

Introduction

This hearing was convened on applications by both the landlord and the tenants.

By application of May 13, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on May 2, 2013. The landlord also sought a monetary award for unpaid rent and recovery of the filing fee for this proceeding.

By prior application made on May 3, 2013, the tenant sought to have the Notice to End Tenancy set aside and an order that the landlord comply with an agreement that rent would be subject to a reduction if paid on time.

As a matter of note, this tenancy was the subject of a hearing on April 24, 2013 in which the landlord was granted an Order of Possession to take effect on June 30, 2013. During the present hearing, the landlord stated that he was satisfied with the existing Order of Possession for June 30, 2013 and wished to proceed on the matter of his claimed rent shortfall..

Issue(s) to be Decided

This matter application requires a decision on whether the landlord is entitled to a Monetary Order as requested.

Background and Evidence

This tenancy began on June 1, 2009 at which time the tenants rented the whole house including downstairs suite. Rent was \$2,500 per month and the landlord holds a security deposit of \$825.

In mid-February 2013, the male tenant suffered a severe illness and consequent loss of income. In an effort to accommodate changing circumstances, the landlord took over renting the lower suite and reduced the applicant/respondent tenants' rent to \$1,750 with a further reduction to \$1,500 if the rent was paid on time.

In the present dispute, the landlord makes claim that the rent due on May 1, 2013 was not paid on time, that \$1,500 was paid late, and he now seeks a Monetary Order for the \$250 balance and recovery of the filing fee for this proceeding.

The landlord submitted a copy of his cell phone billings showing that he had called the tenant three times on May 1, 2013: at 2:06 p.m., 6:57 p.m. and 9:20 p.m. in an effort to collect the rent. During the 6:57 call, he said the tenant told him that she would leave the cheque under the mat. The landlord attended at 9:20 p.m. and found no cheque under the mat. He called the tenant again who said again that she would leave it under the mat.

The landlord called again on May 2, 2013 and was told by the tenant that she was busy and to come after 4:30 p.m. He returned at 5:45 p.m. and collected the cheque for \$1,500 and served the Notice to End Tenancy for the \$250 rent shortfall.

The tenant stated that she had placed the cheque under the mat on the night of May 1, 2013 and the landlord had simply been unable to find it.

The tenant submitted a letter from her sister stating that she was present when the landlord had verbally agreed that the \$1,750 rent would be reduced to \$1,500 if paid on time.

Analysis

In the absence of any compelling evidence to the contrary, I find that the tenant did not pay the rent on May 1, 2013.

Given the landlord's consideration in having taken over the basement suite and in offering the tenant a \$250 discount if rent was paid on time, I find that it would have been incumbent on the tenant to make certain that the rent was paid to the landlord on time and to make certain she could verify that it was.

If find it unreasonable to consider that the landlord would have made the three calls to the tenant and gone to the rental unit late in the evening to collect the rent and not have made a thorough examination of the area under the mat to locate the cheque.

Therefore, I find that the tenant did not pay rent on May 1, 2013 as required to qualify for the discount and that the landlord is entitled to a Monetary Order for \$250 rent reduction taken by the tenant when she had failed to qualify for it by paying on time.

As the application has succeeded on its merits, I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

As to the tenants' application, by the landlord reverting to the previously issued Order of Possession for June 30, 2013, the request to set aside the Notice to End Tenancy is moot. Having found that the rent was paid late, I find it follows that the landlord did not breach the agreement to discount the rent if paid on time. Therefore, an Order for landlord compliance is not warranted.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$300** for service on the tenants.

The landlord is advised that if the tenants do not make payment of the monetary order by the end of the tenancy, section 38(3) of the *Act* permits the landlord to retain the amount ordered from the tenants' security deposit.

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 30, 2013

Residential Tenancy Branch