



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atlee Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR; FF

Introduction

This is the Tenants' application to a Notice to End Tenancy for Unpaid Rent issued March 28, 2013 (the "Notice") and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

It was determined that the Landlords received the Notice of Hearing documents and copies of the Tenants' documentary evidence on April 8, 2013. The Landlords did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenants.

Issues to be Decided

- Should the Notice be cancelled?

Background and Evidence

A copy of the Notice was provided in evidence. The Notice is for unpaid rent in the amount of \$4,800.00. The parties agreed that rent is \$900.00, due on the first day of each month.

The Landlord stated that he served the male Tenant with the Notice on March 28, 2013. The Tenants acknowledged that they received the Notice on March 28, 2013.

The Landlord alleged that the Tenants owe \$300.00 for October, 2012, and that they have not paid any rent since then. He stated that the Tenants' rent cheques for February and March, 2013 were returned NSF and that the Tenants have not paid any rent for April or May, 2013, so they now owe \$6,600.00.

The Tenants disagreed with the amount of rent owed, but agreed that they are still in arrears of rent to and including March, 2013, and that they have not paid any rent for April or May, 2013; however, they stated that the Landlord had agreed that they could pay the rent in installments. The Landlord stated that he had agreed prior to February that the Tenants could pay bit by bit to catch up, but that when their February and March cheques bounced, he demanded that they pay the outstanding rent in full.

The Landlord stated that he wants the Tenants to move out of the rental unit, and he asked for an Order of Possession effective May 5, 2013.

Analysis

Section 26 of the Act states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenants did not have a right under the Act to deduct all or a portion of the rent. I find that the Tenants did not pay all of the rent when it was due, or within 5 days after receipt of the Notice. **The Tenant's application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice.

Section 55 of the Act provides that if a tenant applies to cancel a notice to end tenancy, the director must give the landlord an order of possession if the tenant's application is dismissed and the landlord requests the order of possession at the Hearing.

I accept the parties' testimony that the Tenants were served with the Notice on March 28, 2013. Therefore, **I find that the tenancy ended on April 8, 2013**, and the Landlords are entitled to an immediate Order of Possession. However, the Landlord requested an Order of Possession to be effective on May 5, 2013. Therefore I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., April 8, 2013.**

The Tenants have not been successful in their application and therefore I find that they are not entitled to recover the cost of the filing fee from the Landlords.

Conclusion

The Tenant's application to cancel the Notices to End Tenancy is **dismissed**.

I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., May 5, 2013**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia 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: May 01, 2013

Residential Tenancy Branch

