



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H & M REMPEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, RP, ERP, MNDC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent; as well as, a request for monetary compensation; and, orders for the landlord to make repairs and emergency repairs. The landlord applied for an Order of Possession for unpaid rent; monetary compensation for unpaid rent; and, authorization to retain the security deposit.

Preliminary and Procedural Matters

Three Applications for Dispute Resolution were filed by the tenants between March 22, 2013 and April 5, 2013. One of the Applications was cancelled due to an error on part of the Service BC office. Of the two remaining Applications I confirmed that only one was served upon the landlord. The Application for Dispute Resolution that was not served upon the landlord indicated the tenants wished to dispute the 10 Day Notice to End Tenancy for Unpaid Rent. I confirmed with both parties that they understood and were prepared to deal with the 10 Day Notice as a disputed Notice to End Tenancy during this hearing. As a result, I amended the tenants' Application for Dispute Resolution that was served upon the landlord to include the dispute code applicable to disputing a 10 Day Notice to End Tenancy for Unpaid Rent and I dismissed the Application for Dispute Resolution that was not served upon the landlord.

As the tenants had indicated multiple matters of dispute on their Application I confirmed with the tenant at the beginning of the hearing that the tenants wish to continue with the tenancy; therefore, I determined the primary issues to resolve were the validity of the Notices to End Tenancy.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I dismissed the tenants' request for monetary compensation as I found that issue not sufficiently related to the Notices to End

Tenancy. The monetary claim is dismissed with leave and the tenants are at liberty to file another Application for Dispute Resolution seeking monetary compensation from the landlord.

The landlord's Application for Dispute Resolution indicated the landlord was seeking to retain the security deposit in the section that deals with Monetary Orders; however, the landlord submitted that she had amended the Application to include a request for a Monetary Order for the unpaid rent through the Service BC office. Neither I, nor the tenant, had a copy of the Application amended by the landlord. In reading the landlord's details of dispute and the tenant's submissions I was satisfied that both parties understood and were prepared to deal with the issue of unpaid rent at this hearing. Therefore, I amended the landlord's application to indicate the dispute code related a Monetary Order for unpaid rent.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?
4. Is it necessary to issue orders to the landlord to make repairs and/or emergency repairs?

Background and Evidence

The tenancy commenced September 1, 2012 and the landlord collected a security deposit of \$275.00. The tenants are required to pay rent of \$550.00 on the 1st day of every month. For the months of September 2012 through March 2013 the monthly rent was sent directly to the landlord by the Ministry.

On February 18, 2013 the parties participated in a dispute resolution hearing and on March 1, 2013 the Arbitrator issued a decision reflecting an agreement for the landlord to have five repair issues addressed.

On March 20, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of April 30, 2013 (the 1 Month Notice). The rent for April 2013 was not paid and on April 3, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door. The 10 Day Notice indicates

rent of \$550.00 was due on April 1, 2013 and has a stated effective date of April 15, 2013.

On April 5, 2013 the tenants send their Application for Dispute Resolution and supporting documents to the landlord via registered mail but do not include a cheque or money order for unpaid rent.

The tenant provided several reasons as to why the rent for April 2013 has not been paid:

1. The landlord had not provided the tenant with receipts for rent payments for the months of January – March 2013.
2. The landlord had to update the Shelter Information form for the tenant and the updated form was received by the Ministry until after the cheque cut-off date for the benefit month of April 2013. As a result the Ministry sent the tenant a cheque that included the rent for April 2013. The tenant cashed the Ministry's cheque and had cash to give to the landlord for rent.
3. The tenant phoned the landlord three times but the landlord did not answer the phone. The tenant acknowledged that he did not leave a message for the landlord on the answering machine.
4. The tenant went to the landlord's office three times on April 1, 2013 to pay the rent in cash at approximately 11:00 a.m.; 4:00 p.m. and 7:00 p.m. but there was nobody at the landlord's office.
5. The tenant does not have a bank account and could not send a cheque to the landlord's service address.
6. The tenants were not given a rent reminder letter before receiving the 10 Day Notice to End Tenancy.
7. The landlord has not made the five repairs agreed upon during the February 18, 2013 hearing.
8. There is mould in the rental unit.

The tenant confirmed that they had not paid any amounts for emergency repairs.

In response to the tenant's statements, the landlord made the following submissions:

- The landlord was not required to issue receipts for the previous month's rent payments as the rent was paid by way of cheque; however, the landlord has prepared rent receipts for the tenant which are waiting to be picked up at the landlord's office.
- The landlord had completed the updated Shelter Information form and gave it to the tenant to deliver to the Ministry. The landlord is not responsible for delivering it to the Ministry.

- The landlord did not receive any messages on the answering machine from the tenant.
- There was an agent in the landlord's on-site office on April 1, 2013 between the hours of 9:00 a.m. and 4:00 p.m. except for a lunch break and when the agent had to attend to a water leak. The agent left a note on the door of the on-site office with a phone number to call if a tenant wished to pay rent in cash.
- Cheques and money orders can be placed in the mail slot at the landlord's on-site office.
- The landlord has given tenants rent reminders but is not obligated to do so before issuing a 10 Day Notice.
- The tenant wrote a letter indicating he was withholding the rent payment.

The landlord pointed to a signed letter from the tenant that is dated April 2, 2013 and is included in the tenant's evidence package. The letter reads:

To Whom It May Concern

My name is [name of tenant] and this is a Notice that I have been asking for my rent receipts from the months: Feb/13, March/13, April and landlord is not complying with my verbal request and all comments and concerns were not taken and denied by Mark the Agent. I'm wanting 3 rent receipts and this is Notice I'm holding rent until this is resolved. Sorry and thank you.

[my emphasis added]

Analysis

Section 26 of the Act provides rules about the payment and non-payment of rent. It states:

- (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.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.

It was undisputed that the rent for April 2013 has not been paid and that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent. As indicated on the 10 Day Notice, and as provided under section 46 of the Act, upon receiving a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice.

As the 10 Day Notice was posted on the door it is deemed to be received three days later under section 90 of the Act. Accordingly, the tenants had until April 11, 2013 to pay the outstanding rent to nullify the Notice and the effective date on the 10 Day Notice automatically changes to read April 16, 2013 pursuant to sections 46 and 53 of the Act.

It was undisputed that the tenants did not paid the outstanding rent for April 2013 within five days of receiving the 10 Day Notice, or at any other time. I reject the tenant's submissions that efforts were made to pay the rent as I find it more likely that the tenants chose to withhold the rent; considering the following:

- the tenant's primary focus during the hearing was that the landlord has not make all five of the repairs agreed to during the hearing of February 18, 2013 and that the landlord has not given the tenants receipts for the previous three months.
- the letter written by the tenant April 2, 2013 indicating he is withholding the rent for April 2013.
- the tenants had a number of options available to them to pay the rent and they did not take steps to any of the following:
 - leave a phone message for the landlord on the landlord's answering service that they had the rent in cash;
 - leave a note in the landlord's on-site office mail slot informing the landlord that they had a cash payment to make;
 - send a cheque or money order to the landlord's service address by mail along with the tenant's evidence package, or separately.

The Act provides for limited circumstances when a tenant may legally withhold or deduct amounts from rent payable to the landlord, including: emergency repairs under section 33 of the Act; and, with authorization of the Director, as delegated to an Arbitrator, under section 65 of the Act. In this case, the tenants have not paid for emergency repairs and are not entitled to deduct amounts from rent for such. Upon review of the decision issued March 1, 2013 I find the Arbitrator did not authorize the tenant to withhold any amounts from rent. Therefore, I find no basis to conclude the tenants had the legal right to withhold rent for the month of April 2013.

In light of the above, I conclude that the tenants withheld rent for the month of April 2013 and did not have the legal right to do so. I find the landlord served the tenants with a valid 10 Day Notice to End Tenancy for Unpaid Rent and the tenants did not pay the outstanding rent or have a legal basis to have the notice cancelled. Accordingly, dismiss the tenants' request to cancel the 10 Day Notice and I grant the landlord's

request for an Order of Possession. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Having found the tenancy has ended for unpaid rent, I found it unnecessary to further consider the 1 Month Notice to End Tenancy for Cause. Nor is it necessary to further consider the tenants' requests for repair orders.

Based upon the evidence before me, I find the landlord entitled to recover the unpaid rent for April 2013 in the amount of \$550.00. I also award the filing fee to the landlord. I authorize the landlord to retain the security deposit in partial satisfaction of these awards. Therefore, I provide a Monetary Order to the landlord in the net amount of \$325.00 to serve upon the tenants and enforce as necessary.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the net amount of \$325.00 to serve and enforce as necessary.

The tenants' Applications have been dismissed without leave with the exception of the tenants' monetary claims against the landlord. The tenants' monetary claims were dismissed with leave and the tenants are at liberty to file another Application for Dispute Resolution with respect to monetary claims against the landlord.

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 02, 2013

Residential Tenancy Branch