



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: OPR; MNR

Tenants' application: CNR; MNDC; RR

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession and a Monetary Order for unpaid utilities and rent for April, 2103 and loss of revenue for May, 2013.

The Tenants seek to cancel the Notice to End Tenancy; compensation for damage or loss under the Act, regulation or tenancy agreement; and a rent reduction for the cost of repairs, services or facilities.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties served each other with the Notice of Hearing documents by registered mail, as follows: the Tenants mailed their Notice of Hearing documents to the Landlord on April 18, 2013, and provided the receipt and tracking numbers in evidence; the Landlord mailed each Tenant a copy of his Notice of Hearing documents on April 25, 2013. The Landlord provided copies of the registered envelopes and tracking numbers in evidence.

Preliminary Matters

At the outset of the Hearing, it was determined that the female Tenant's name was spelled incorrectly on the Landlord's application. In addition, the Tenants asked that the Tenant's application be amended to add the female Tenant's name to the list of Applicants.

Both applications were amended accordingly.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the Tenants' claim for compensation and their request for an Order reducing monthly rent are not sufficiently

related to the main issue, which is to cancel the Notice to End Tenancy. For these reasons, I dismiss those portions of the Tenants' application **with leave to reapply**.

Issues to be Decided

- Is the Notice to End Tenancy for Unpaid Rent a valid Notice?
- Is the Landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

The rental unit is the basement suite of a house. The parties signed a one year lease, a copy of which was provided in evidence. The term of the lease was March 1, 2013 to March 1, 2014. Monthly rent is \$900.00, due on the first day of each month. The Tenants were required to pay a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$225.00. The Landlord required these payments to be made by May 1, 2013. The parties agreed that to date, neither deposit has been paid.

A copy of the tenancy agreement was provided in evidence. The Landlord testified that the Tenants also agreed to pay \$120.00 per month for utilities. The Tenants stated that the copy of the tenancy agreement that the Landlord provided was altered after they signed it to add the provision for \$120.00 for utilities. The Tenants stated that they agreed to pay for 40% of the utilities if they were provided with a copy of the invoice.

The Tenants do not dispute that they have not paid rent for the months of April or May, 2013. They testified that they are withholding rent for emergency repairs. The Tenants stated that their fridge does not work and that the Landlord has not fixed it. The Tenants stated that they have not done any repairs to the refrigerator.

The parties stated that the Landlord had agreed that the Tenants could make certain repairs at the rental unit and that rent would be adjusted accordingly. However, the parties disagreed with the amount of work the Landlord had authorized the Tenants to do.

The Landlord stated that the Tenants did not pay rent or hydro for the month of April, so he issued the Notice to End Tenancy on April 11, 2013, and handed it to the female Tenant on April 11, 2013.

The Landlord seeks a monetary award in the amount of \$1,575.00, calculated as follows:

Unpaid rent for April, 2012 (adjusted for work done):	\$675.00
Loss of revenue for May, 2012:	<u>\$900.00</u>
TOTAL	\$1,575.00

Analysis

Section 26 of the Act provides that rent must be paid when it is due, whether or not the Landlord complies with the Act, regulation or tenancy agreement, unless the Tenants have a right under the Act to deduct rent. During the Hearing, I confirmed with the Tenants that they did not have any right under the Act to withhold rent from the Landlord.

The Tenants stated that they withheld rent for emergency repairs (the fridge). Section 33(1) of the Act states:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that a refrigerator does not fall within the definition of "emergency repairs". Furthermore, the Tenants have not repaired or replaced the refrigerator and therefore, it cannot be classified as an emergency repair.

Sections 33(3), (5) and (7) of the Act states:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the Tenants did not have a right under Section 33 to deduct any amount from rent for emergency repairs.

The parties acknowledged that they had an agreement that the Tenants could do work for the Landlord, but disagreed with the amount of work or remuneration to be paid. This arrangement was not recorded as part of the tenancy agreement and therefore, I find that there is insufficient evidence of any amount that would be deducted from rent. **I make no finding with respect to any monetary award that the Tenants may be entitled to in this respect. This portion of their application was dismissed with leave to reapply.**

The Landlord is seeking unpaid rent in the amount of \$675.00 for April, and the Tenants agreed that they have not paid any rent for April, 2013. Therefore, I find that the Notice is a valid Notice for unpaid rent.

I accept that the Notice to End Tenancy was served on April 11, 2013. Therefore, I find that the tenancy ended 10 days afterwards, on April 21, 2013. I find that the Tenants are overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenants.**

I find that the Landlord has established a monetary award in the amount of **\$1,575.00** for unpaid rent and loss of revenue.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy issued April 11, 2013, is **dismissed**. The remainder of the Tenants' application is **dismissed with leave to reapply**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$1,575.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 16, 2013

Residential Tenancy Branch