



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application: OPR; MNR; MNSD; FF

Tenants' application: CNR; MNDC; MNR; RR; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek to cancel the Notice to End Tenancy for Unpaid rent issued March 15, 2013 (the "Notice"); compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; a reduction in rent for repairs, services or facilities agreed upon by not provided; and to recover the cost of the filing fee.

The parties affirmed testimony at the Hearings.

These applications were scheduled to be heard on May 1, 2013. During that Hearing, it was determined that the parties served each other with their hearing packages by registered mail. The Tenant acknowledged receiving copies of the Landlords' documentary evidence. The Landlords stated that they did not receive copies of the Tenants' documentary evidence. The Tenant stated that he provided the Landlords with copies of his evidence by registered mail. A search of the Canada Post tracking system indicated that the documents were available for pick up by the Landlord. I advised the Tenant that there were not copies of his documentary evidence on the Residential Tenancy Branch (RTB) file. He stated that he had also sent copies to the RTB by registered mail, and provided the tracking number. A search of the Canada Post tracking number for the RTB package indicated that the package was signed for on April 15, 2013.

Therefore, I adjourned both matters to May 17, 2013, to allow the Tenant to provide another copy of his evidence to the RTB.

On May 17, 2013, the Landlords testified that they had picked up the Tenant's documentary evidence; and the Tenants' documentary evidence was on the RTB file.

Preliminary Matters

The Landlords' application was amended to reflect the accurate spelling of the male Tenant's name.

During the course of the Hearing, the Tenant stated that he wished to withdraw his application for compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; a reduction in rent for repairs, services or facilities agreed upon by not provided; and recovery of the cost of the filing fee. I allowed the Tenants' application to withdraw these portions of their Application. **The Tenants have leave to reapply if they so desire.**

Issues to be Decided

- Should the Notice be cancelled or upheld?
- Are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
- May the Landlords apply the security deposit towards any monetary award?

Background and Evidence

There is no written tenancy agreement between the parties; however, the parties agree on the following facts:

- The tenancy started in April, 2009.
- Monthly rent is \$850.00, due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$425.00 at the beginning of the tenancy.
- The rental unit is the lower suite of a house containing two suites. Utilities are not included in the rent for either suite. The Landlord requires the upstairs tenants to put hydro bills in their name and then collect the downstairs tenants' share from the downstairs tenants.

The Landlords testified that the Tenants did not pay rent when it was due on March 1, 2013, so they issued the Notice and served the Tenants with the Notice by posting the Notice to the Tenants' door on March 15, 2013. The Tenant acknowledged service of the Notice on March 17, 2013.

The Tenant also acknowledged that the Tenants have not paid rent for March, April or May, 2013. He stated that he had a verbal agreement with the Landlord that he did not

have to pay rent because of issues with the utilities and that the parties had a mutual agreement that the Tenants would move out of the rental unit on May 31, 2013.

The Landlords disputed the Tenant's testimony and said that they had no such agreement.

The Tenant testified that the Tenants moved out of the rental unit on or about April 17, 2013. The Landlords stated that they did not believe that the Tenants had moved, and requested an Order of Possession.

Analysis

I find that the Tenants were served with the Notice on March 17, 2013. The Tenants did not pay the outstanding rent or file to dispute the Notice within 5 days of receipt of the Notice. During the Hearing, the Tenant made mention of a previous Decision, a copy of which he had provided in evidence. He stated that he applied to dispute the Notice in the previous application; however, upon looking at the Decision it is clear that he did not. Therefore, pursuant to the provisions of Section 46(8) of the Act, I find that the tenancy ended on March 27, 2013. I find that the Landlords are entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

Based on the testimony of both parties, I find that the Landlords have established a monetary award for unpaid rent for the month of March, 2013, and loss of revenue for the months of April and May, 2013, in the total amount of \$2,550.00.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award.

The Landlord have been successful in their application and I find that they are entitled to recover the cost of the filing fee from the Tenants.

I hereby provide the Landlords a Monetary Order, calculated as follows:

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|---|-------------------|
| Unpaid rent and loss of revenue | \$2,550.00 |
| Recovery of filing fee | \$50.00 |
| Less security deposit held by Landlords | <u>- \$425.00</u> |
| Total | \$2,175.00 |

Conclusion

The Tenants' application to cancel the Notice to End Tenancy issued March 15, 2013, is **dismissed**. The remainder of the Tenants' application was withdrawn and the Tenants may reapply if they chose to do so.

I hereby provide the Landlords 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 Landlords with a Monetary Order in the amount of **\$2,175.00** 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 17, 2013

Residential Tenancy Branch