



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, CNC, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's application for an order for possession and a monetary order was scheduled for hearing on May 15, 2013, but both parties agreed that I should also hear and determine the tenant's application to cancel a one month Notice to End Tenancy which was set for hearing on May 16, 2013 at 10:30 A.M. I have heard the testimony of the parties and reviewed the documentary evidence with respect to both applications for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to an order for possession pursuant to a 10 day Notice to End Tenancy for unpaid rent dated April 3, 2013?

Is the landlord entitled to a monetary award and if so, in what amount?

Should the one month Notice to End Tenancy dated April 9, 2013 be cancelled?

Background and Evidence

The rental unit is an apartment in Langley. The tenancy began on February 1, 2013 for a one year fixed term and thereafter month to month. Rent in the amount of \$875.00 is payable on the first of each month. The tenants paid a \$437.50 security deposit on February 1, 2013.

The landlord's representative testified that the tenants failed to pay the rent for April and on April 3, 2013 she attended at the rental unit to serve a 10 day Notice to End Tenancy for unpaid rent. The tenants did not answer the door. The landlord's representative did not leave a copy of the Notice to End Tenancy on the door and did not take any other steps to serve the tenants with the 10 day Notice to End Tenancy. The tenants later paid all but \$195.00 of the rent due for April. They have not paid rent for the month of May.

On April 9, 2013 the landlord's representative personally served the tenant with a one month Notice to End Tenancy for cause. The Notice requires the tenants to move out of the rental unit by May 31, 2013. The grounds alleged for the Notice to End Tenancy are that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The Notice to End Tenancy also claimed that the tenants have engaged in illegal activity and alleged that they have breached a material term of the tenancy agreement.

The landlord has sent several letters to the tenants concerning tenancy issues. In an April 2, 2013 letter the landlord claimed that the tenants have unauthorized persons living in the rental unit. The landlord referred the tenants to a provision in the tenancy agreement that obliges the tenants to seek written permission before allowing another person to become a permanent occupant of the rental unit. The clause provides that failure to apply in writing for the landlord's written approval constitutes a fundamental breach of the tenancy agreement.

The landlord's representative testified that there are at least two additional people besides the tenants who occupy the rental unit. The landlord said that the tenants have not sought written permission for the additional occupants and the landlord has not granted such permission

The landlord wrote to the tenants about their use of a storage area in the underground parking area. The landlord said the tenants have used the storage without consent and have not removed their belongings after notice to do so. The landlord complained that the tenants have allowed unauthorized persons into the storage area and that they have appropriated a metal door belonging to the landlord to secure the storage area with a chain and padlocks. The landlord also said that there have been complaints about excessive noise and partying from other occupants who wish to remain anonymous because they are intimidated by the tenants.

The tenants disputed all of the grounds for ending the tenancy advanced by the landlord. They denied that they have disturbed other occupants. The tenants said they have never had a party in the rental unit. They said that they work odd hours doing renovations and other occupants may have heard them in the rental unit late at night. The tenants said that the landlord's resident manager has caused problems and created strife and that she has not been truthful in her testimony about the tenants. The tenants said they have removed all their belongings from the storage area as directed by the landlord. They replaced the door to the storage area because the old door was broken; they received permission to use the door from a different manager who is no longer employed by the landlord.

The tenants said that additional occupants, including the female tenant's boyfriend and another person do not live full-time at the rental unit. The tenants said that the boyfriend works out of town and stays at the rental unit when he is not at work. The landlord's representative said that the additional occupants were generally present at the rental unit and the tenants frequently allowed non-residents into the underground parking and storage area; there have been several instances of break-ins and theft from automobiles in the parking area; she suggested that this was related to the tenant's guests accessing the parking and storage area. The landlord's representative also said the tenant has an unlicensed automobile that he keeps in the parking area contrary to the terms of the tenancy agreement. The tenant denied this. He said that he buys temporary insurance for the vehicle every few weeks and it is always insured.

Analysis

There is no dispute that there is \$195.00 outstanding for April rent and that May rent in the amount of \$875.00 has not been paid. The tenants claimed that they have attempted to pay rent to the landlord's agent in cash, but she has refused to accept the payment or deal with the tenants. The landlord's representatives denied that rent payments have been tendered by the tenants, but there is no dispute that the sum of \$195.00 is outstanding for April and \$875.00 is due for May. Because the landlord did not serve the tenants with the 10 day Notice to End Tenancy for unpaid rent, I dismiss the landlord's application for an order for possession pursuant to the Notice to End Tenancy for unpaid rent. I find that the landlord is entitled to a monetary award for unpaid rent for April and May in the amount of \$1,070.00. The tenants did not provide evidence that they tendered May rent when it was due on May 1, 2013 and I find that the landlord is also entitled to claim a \$20.00 late fee for May. I do not award a filing fee because the landlord was only partially successful on its application.

With respect to the tenants' application to cancel the one month Notice to End Tenancy for cause, the landlord has not submitted direct evidence to show that the tenants have unreasonably disturbed other occupants of the rental property and the landlord has not provided evidence to support its allegations that the tenants have engaged in illegal activities. I find that those grounds have not been proven on a balance of probabilities.

I do find, however, that the landlord has established that the tenants have breached a material term of the tenancy. I accept the landlord's evidence that the tenants have allowed and continue to allow additional occupants to reside in the rental unit without first seeking or obtaining written permission from the landlord. I did not find the tenants' testimony concerning the additional occupants and the frequency of their presence at the rental unit to be credible. I accept and prefer the evidence of the landlord's agent that there are additional occupants living in the rental unit who are permanent occupants. On April 2, 2013 the tenants were given an opportunity to correct the

breach, but they have not done so. There are still additional occupants residing in the rental unit and no written request for approval has been given to the landlord. The landlord has valid security reasons for its requirement that it approve occupants of the rental property. I find that the landlord has shown that there is sufficient cause to end the tenancy and I decline to cancel the one month Notice to End Tenancy for cause. The tenants' application to cancel the Notice is dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective May 31, 2013 after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

I grant the landlord a monetary award in the amount of \$1,090.00. This order may be filed in the Small Claims Court 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

