



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent, other losses; and, authorization to retain the security deposit and pet deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is there a basis to cancel the 10 Day Notice?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to compensation for unpaid and/or loss of rent and monies owed for a fridge?
4. Is the landlord authorized to retain the security deposit and pet deposit?

Background and Evidence

The tenancy commenced May 1, 2012 and the tenants paid a security deposit and pet deposit totalling \$1,190.00. The tenants were required to pay rent of \$1,190.00 on the 1st day of every month. The tenancy was set for a fixed term of six months and then converted to a month-to-month tenancy.

The tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on May 3, 2013 with a stated effective date of May 13, 2013 (the Notice). The Notice indicates the tenants failed to pay rent of \$1,190.00 for the month of May 2013. The tenants filed to dispute the Notice on the basis they needed more time to pay the outstanding rent. The tenants have not paid the rent for May 2013, or June 2013, as of the date of this hearing.

The tenants submitted that they vacated the rental unit May 23, 2013. The landlord submitted that he entered the rental unit May 30, 2013 and found the unit vacant except for one box of dry foods. It was undisputed the tenant has not yet returned the keys to the landlord. The tenant stated he would return the keys to the landlord's office today.

The landlord is seeking to recover unpaid and/or loss of rent for the months of May and June 2013. The tenant responded by stating the deposits would cover May's rent and their obligation to pay for June's rent would rest with the requirements of the Act.

The landlord is seeking to recover \$150.00 for a fridge the tenant was authorized to sell and the tenant did not remit the sale proceeds to the landlord. The tenant did not deny that there were discussions about selling a fridge but stated that the fridge was not sold and that it remains in the shed on the property.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case, the tenants filed to dispute the Notice; however, the inability to pay rent is not a basis under the Act to cancel a 10 Day Notice. Therefore, I find the 10 Day Notice served upon the tenants was a valid and enforceable 10 Day Notice.

When a tenant vacates a rental unit possession of the unit automatically returns to the landlord. Having heard the tenants have essentially vacated the rental unit but have not returned the keys to the landlord, rather than issue an Order of Possession to the landlord, I authorize the landlord to change the locks to the rental unit upon receipt of this decision, if the landlord so chooses.

Based upon the evidence before me, I am satisfied the tenants owe the landlord rent for the month of May 2013. I also find the tenants are obligated to compensate the landlord for loss of rent for June 2013 as I am satisfied the unit has not been re-rented for June due to the tenants' violations of the tenancy agreement and Act, which include: not paying rent when due and not moving out of the rental unit by the stated effective date on the 10 Day Notice. Nor, did the tenants give the landlord notice to end the tenancy with an effective date earlier than June 2013.

I award the landlord the \$50.00 filing fee paid for the landlord's Application for Dispute Resolution I authorize the landlord to retain the tenants' security deposit and pet deposit in partial satisfaction of rent owed to the landlord.

I make no award to the landlord for compensation for a fridge as I am not satisfied the agreement between the party's falls under the Act or that the fridge was in fact sold.

In light of the above, the landlord is provided a Monetary Order in the net amount of \$1,240.00 calculated as follows:

Unpaid Rent: May and June 2013	\$ 2,380.00
Filing fee	50.00
Less: security deposit and pet deposit	<u>(1,190.00)</u>
Monetary Order	\$ 1,240.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

As the tenants have vacated the rental unit but have not yet returned the keys to the landlord I authorize the landlord to change the locks to the rental unit upon receipt of this decision if the landlord so chooses. The landlord has been authorized to retain the tenants' security deposit and pet deposit in partial satisfaction of rent owed to the landlord and the landlord has been provided a Monetary Order for the balance of \$1,240.00 to serve and enforce as necessary.

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: June 05, 2013

Residential Tenancy Branch

