



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, MNR

For the landlord: MNR, OPR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and a monetary order for the cost of emergency repairs.

The landlord applied for a monetary order for unpaid rent, for an order of possession for the rental unit due to unpaid rent, for authority to retain the tenant’s security deposit, a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for the application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the other’s application, the tenants’ amended application, or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue #1-I have determined that the portion of the tenants’ application dealing with a request for monetary compensation for emergency repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenants’

Application and dismissed that portion of the tenants' request for that order, with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, and to recover the filing fee?

Background and Evidence

The tenancy agreement states that this tenancy began on February 1, 2013, monthly rent is \$700, due on the first day of the month, and that the tenants were to pay a security deposit of \$350.

The landlord submitted that the tenants moved into the rental unit earlier in January 2013, but was unclear of the date; the tenants said they started the tenancy on February 1, 2013.

The parties disputed whether a security deposit was paid, with the tenant submitting that one was paid through their labour on the rental unit at the beginning of the tenancy and the landlord stating that due to their labour, the tenants were not required to pay a security deposit or the first half of the month's rent.

The landlord was not clear why she marked her application for dispute resolution to request to retain the security deposit.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenants were served three 10 Day Notices to End Tenancy for Unpaid Rent. The landlord's agent said that the first Notice was served on July 4, 2013; however that Notice did not list the tenants' names. The evidence indicates that the landlords served a second Notice on July 19, 2013, on that date by posting it on the tenants' door.

Both Notices listed unpaid rent of \$700 due on July 1, 2013.

It is apparent that the tenants filed an application for dispute resolution in dispute of the July 4, Notice, as their application date shows that it was filed on July 15, 2013.

Since the date of their original application in dispute of the July 4, 2013, Notice, the landlord submitted that the tenants were served another Notice, dated August 2, 2013, listing unpaid rent of \$700 for August 2013, listing an effective move-out date of August 12, 2013.

The tenants' filed an amended application for dispute resolution seeking cancellation of that Notice, as well as an increased monetary claim.

The landlord submitted that the tenants have not made a rent payment since issuance of the Notices in July or in August, and owe the amount of \$1400 in total unpaid rent for July and August, which is the amount of her monetary claim listed in her application.

In response, the tenant claimed that they had a flea infestation and were seeking reimbursement for the chemical treatment. As well, the tenant submitted that they were encountering other issues with the landlord and her family members, which resulted in the loss of their quiet enjoyment.

The tenant said that she attempted to pay a partial payment of \$400 in July, but that the landlord refused, and that the ministry dealing with their disabilities was holding the rent cheques pending the outcome of this hearing.

I must note that the tenant asked that if I awarded monetary compensation to the landlord, that she is credited with \$350 for the security deposit she claimed she paid through her labour in the rental unit at the beginning of the tenancy.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. As the tenants have not submitted evidence that any emergency repairs necessary were undertaken, as flea treatment is not considered an emergency repair, they have not met this criterion.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within five days. When a Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I am satisfied that the tenants owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

I find the landlord submitted sufficient evidence that the tenants owe the amount of \$700 for unpaid rent for July and \$700 for unpaid rent for August 2013.

I therefore find that the landlord is entitled to a monetary award of \$1400, comprised of unpaid rent of \$700 for July 2013, \$700 for August 2013, and recovery of the filing fee of \$50, which I have granted due to the landlord's successful application.

Tenants' application:

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

I have not credited the tenants a security deposit to be retained in partial satisfaction of the landlord's monetary award, as I find the tenants submitted insufficient evidence that there was an agreement in place that the landlord would pay a security deposit, and hold it in trust in lieu of work on the rental unit.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be

filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1450, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

The tenants' application is dismissed, without leave to reapply.

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: August 20, 2013

Residential Tenancy Branch

