



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant CNR, MNDC, ERP, RP, MT, FF
	Landlord OPR, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and utilities, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to do emergency repairs and general repairs to the unit site or property, for more time to make the application and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on August 23, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on August 24, 2013 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

During the start of the conference call when the Arbitrator was confirming the service of documents information and the tenancy information the Tenant said that he had many concerns about the Landlord and his illegal activities and he would pursue these concerns in court and he did not need this hearing to prove his claims. Consequently the Tenant hung up his phone and left the conference call. As a result in the absence of any testimony and evidence from the Tenant to support the application, the application is dismissed without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and utilities and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?

Background and Evidence

This tenancy started on May 7, 2013 as a month to month tenancy. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. No security or pet deposits were paid by the Tenants.

The Landlord said that the Tenant had unpaid rent for July, 2013 in the amount of \$525.00 and unpaid rent for August, 2013 in the amount of \$1,050.00 as well as unpaid utilities in the amount of \$84.76. Before leaving the conference call the Tenant said he had paid the July, 2013 rent in cash half on July 1, 2013 and half on July 23, 2013, but the Landlord would not give him any receipts. The Landlord said the Tenant did not make the July 23, 2013 payment of \$525.00 which is the amount of the 10 Day Notice to End Tenancy dated July 15, 2013. The Tenant agreed he has not paid the August, 2013 rent in the amount of \$1,050.00. As a result of the unpaid rent the Landlord gave the Tenant a 10 Day Notice to End Tenancy for unpaid rent on July 15, 2013 in the amount of \$525.00 and for unpaid utilities July 18, 2013 in the amount of \$84.76. Further the Landlord said the Tenants have not paid the August, 2013 rent of \$1,050.00. The Landlord said if their application is successful he is requesting an Order of Possession for as soon as possible.

The Landlord also said they are also seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said their total claim is for \$1,659.76 in unpaid rent and utilities and the \$50.00 filing fee for a total claim of \$1,709.76.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants did not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenant's application to Cancel the Notice to End Tenancy for Unpaid Rent, as he agrees that there is unpaid rent that has been withheld from the Landlord.

I accept the Landlord's testimony and evidence that there is unpaid rent and utilities in the total amount of \$1,659.76. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent and utilities of \$1,659.76.

Further, I find that the Tenants have not paid the overdue rent and have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlords will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,659.76	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,709.76
Balance Owing		\$ 1,709.76

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$1,709.76 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply due to lack of evidence.

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 26, 2013

Residential Tenancy Branch