



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNE, OLC, AAT, LAT.
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 for unpaid rent, a monetary order for unpaid rent, 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 the Landlord to comply with the Act, regulation or tenancy agreement, to gain access to the unit and to have the locks on the unit changed.

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

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on August 16, 2013 in accordance with section 89 of the Act.

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

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to compensation for loss or damage and if so how much?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations or tenancy agreement?
3. Are the Tenants entitled to access to the rental unit?
4. Are the Tenants entitled to change the locks on the rental unit?

Background and Evidence

The Tenants said this tenancy started on March 1, 2013 as a loose employment/tenancy agreement with a projected term of 1 year. The Landlord said this tenancy started on February 1, 2012 as a loose rental agreement based on whether the rental unit was required to be demolished by the municipality. The Landlord said the agreement was summarized in his letter of February 15, 2012 to the Tenants, which the Tenants signed. The Tenants said they did not sign the letter. The letter dated February 15, 2013 indicates a monthly rent of \$600.00 and a monthly utility charge of \$300.00. The Landlord submitted the letter with his evidence package. The Landlord and both Tenants signed the letter. The Tenants said they had a document from the Ministry of House indicating the tenancy was for \$400.00 per month for utilities only. The Tenants did not submit this document in the evidence package. Both parties agreed no security deposit was required.

The Tenants said their application is to Cancel a Notice to End Tenancy because employment has ended, but the only Notice in the application is for unpaid rent. The Tenants application is amended to cover the Notice to End Tenancy for unpaid rent or utilities.

The Landlord said that he wants to develop the property because the conditions set by the Municipality to save the rental unit are not acceptable to the Landlord. Consequently the rental unit does not comply with the Municipal bylaws and as a result the Landlord is going to demolish the unit to develop the property. The Landlord said relations between the Tenants and the Landlord have deteriorated and now the Landlord wants to end the tenancy for non payment of rent. The Landlord continued to say that he made a concession to the Tenant of lowering the rent to \$400.00, as the Tenants felt they could pay the original amount of \$900.00. The Landlord said the Tenant did not pay rent of \$400.00 for the months of May, June, July and August, 2013, when it was due and as a result, on August 7, 2013, he registered mailed a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 7, 2013 to the Tenants. Further the Landlord said the Tenants have not paid the unpaid rent for September, 2013 in the amount of \$400.00 and he is requesting an Order of Possession for as soon as possible if his application is successful.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$2,000.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$2,050.00.

The Tenants said they thought the rent was paid by moneys owed to them by the Landlord for work done on the property. The Tenants said the Landlord owes them \$3,921.59 for labour and material that they have spent on the rental unit. The Landlord said they did not authorize any repairs and there is no employment agreement between the Tenants and the Landlord. The Tenants also said they paid the Landlord the \$400.00 rent each month in cash and the Landlord did not give them a receipt for the rent payment. The Tenant said he thought the Landlord came to the rental unit in August and September, 2013 to collect the rent, but he could not remember when. The Landlord said he has not been to the rental unit or seen the Tenants since July, 2013. The Tenant continued to say that there is no unpaid rent and they do not want to end the tenancy. The Tenant continued to say they have made all the arrangements to save the rental unit as a historical building. The Tenants said they have had meetings with the Major and other City officials who can verify these statements. The Tenant did not have any witnesses or evidence to corroborate these statements. The Landlord said he has tried to save the rental unit over the last three years, but the conditions to do so did not work for him; therefore the Landlord is going to demolish the unit.

Both parties said the other parties were not telling the truth.

The Tenant said in closing the Landlord owes him \$3,921.59 and this should cover any unpaid rent or utilities that the Landlord believes are unpaid.

The Landlord said the Tenants have not paid rent from March, 2013 to September, 2013 and the Landlord wants to end the tenancy for non payment of rent. The Landlord requested an Order of Possession for as soon as possible.

Analysis

It is apparent that communications and the relationship between the Landlord and the Tenants have deteriorated and there was considerable contradictory testimony and evidence presented. The parties did not agree on the tenancy information, but the basis of any tenancy is a tenancy agreement and in this case the tenancy agreement is not on a standard form and it does not cover all the elements that a tenancy agreement should cover, but it is signed by all the parties and it does define what the agreement was. Therefore I accept the letter dated February 15, 2013 as a valid tenancy agreement. The terms were \$600.00 a month rent and \$300.00 a month utilities, which were to be reviewed after 6 months. As well I accept that the parties verbally agreed to adjust the rent/utilities to \$400.00 per month which is the effect rent in this tenancy.

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 do not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants application to cancel the Notice to End Tenancy for unpaid rent or utilities without leave to reapply as the rent /utilities are unpaid for the months of May, June, July, August and September, 2013 in the total amount of \$2,000.00.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$2,000.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$2,000.00. As well since the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of \$50.00 for this proceeding from the Tenants. A Monetary Order in the total amount of \$2,050.00 is awarded to the Landlord.

Further as the Tenants application to cancel the Notice to End Tenancy for unpaid rent or utilities has been dismissed and I find that the Tenant has not paid the overdue rent the Notice to End Tenancy is valid. I find pursuant to s. 55 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.

With respect to the Tenants application for the Landlord to Comply with the Act, regulations and tenancy agreement, for the Tenant to have access to the unit and for the Tenant to change the locks: I find the Tenants have not provide evidence that the Landlord has not complied with the Act, regulations, or tenancy, the Tenants have possession of the unit at the present time and the Tenants have not established grounds for changing the locks. Therefore I dismiss these parts of the Tenants application without leave to reapply.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,050.00 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: September 24, 2013

Residential Tenancy Branch

