



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application (filed November 8, 2013): CNC; CNC; CNR; FF

Landlord's application (filed December 11, 2013): ET; OPC; OPR; OPB; MNR; MNSD; MNDC; FF; O

Introduction

This Hearing was convened to consider cross applications. The Tenants filed their Application on November 8, 2013, initially seeking to cancel a One Month Notice to End Tenancy for Cause issued October 26, 2013; and to recover the cost of the filing fee from the Landlord. The Tenants did not file an Application to cancel the Notices to End Tenancy that were issued on November 14, 2013. They testified that they spoke to an agent at the Government Agent's office and were advised to amend their Application for Dispute Resolution that they filed on November 8, 2013. They stated that they thought they had done this; however, there is no amended application in the Residential Tenancy Branch's electronic filing system. The Landlord stated that she assumed the Tenants were seeking to cancel all of the Notices. Under these circumstances, I amended the Tenants' Application to include a request to cancel all of the Notices.

The Landlords seek an early end to tenancy and an Order of Possession; an Order of Possession for Cause; an Order of Possession for unpaid utilities; a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of the Landlords' monetary award; "other" orders; and to recover the cost of the filing fee from the Tenants.

Both parties gave affirmed testimony at the Hearing.

Preliminary Matters

The Landlord has applied to end the tenancy early. Section 56 of the Act states:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this case, the Landlord is not alleging that the Tenants have done any of the things set out in Section 56(2)(a) of the Act. This portion of the Landlord's application is dismissed.

Issues to be Decided

1. Is the Notice issued October 26, 2013, a valid notice to end the tenancy?
2. Are the Notices issued November 14, 2013, valid notices to end the tenancy?
3. Is the Landlord entitled to a Monetary Order for unpaid utilities?
4. If so, may the Landlord deduct her monetary award from the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on December 1, 2012. The Tenants moved into the rental unit early, but were not required to pay prorated rent. Monthly rent is \$1,400.00, due on the first day of each month. In addition to rent, on November 5, 2012, the parties signed an addendum to the tenancy agreement indicating:

Oil heat – Oil tank to be filled on December 1, 2012. Tenants to pay \$100.00 per month for oil until such time as the oil tank is refilled. If oil consumption equates to more than \$100 per month at the next fill, the tenants are responsible for any additional cost. If the oil consumption equates to less than \$100.00 per month at the next fill, then the tenants will have a “credit” with the landlord’s agent.

The oil bill is in the Landlord’s name.

There is an additional occupant, the Tenants’ mother, who signed the addendum as a “tenant” but is not listed as a “tenant” on the first page of the tenancy agreement, and who did not sign the tenancy agreement.

The Tenants paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$300.00 at the beginning of the tenancy. The Tenants and their mother each paid the Landlord 1/3rd of the rent and the oil charge.

The tenancy agreement is a one year lease. The tenancy agreement indicates that the tenancy may continue on a month-to-month basis or another fixed length of time thereafter; however, the Landlord and the Tenants both initialed a box stating that the tenancy ends and the Tenants must move out at the end of the term. The Landlord testified that she has already re-rented the rental property effective January 1, 2014.

Copies of the three Notices to end the tenancy were provided in evidence. The first Notice, issued October 26, 2013, is a One Month Notice to End Tenancy for Cause. The Landlord did not indicate on the Notice what cause she has to end the tenancy.

Neither of the copies of the two Notices to end the tenancy issued on November 14, 2013, that were provided in evidence are signed by the Landlord. However, the Tenants testified that the Notices that they received were signed by the Landlord. One Notice is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The other is a One Month Notice to End Tenancy for Cause.

The Landlord stated that the Tenants are delinquent in paying for oil. The Landlord provided a written accounting of payments made along with copies of the oil bills. The Landlord seeks a monetary award in the amount of \$352.96 for unpaid utilities.

The Landlord stated that the Tenants have also been late 5 times in the last year with their rent payments.

The Tenants did not dispute that they have been late paying rent 5 times over the last 12 months. They stated that they did not receive written warning that they would be evicted if they did not pay rent when it was due. The Tenants submitted that the Landlord accepted the late payments and therefore agreed that rent did not have to be paid on the first day of each month.

The Tenants agreed that they had paid \$1,450.00 towards oil.

The Landlord asked for an Order of Possession effective 1:00 p.m., January 1, 2014.

Analysis

1. Is the Notice issued October 26, 2013, a valid notice to end the tenancy?

I find that the Notice to End Tenancy issued October 26, 2013, is not a valid notice to end the tenancy because it provides no reason for ending the tenancy. This Notice is cancelled.

2. Are the Notices issued November 14, 2013, valid notices to end the tenancy?

I find that the 10 Day Notice to End Tenancy for Unpaid Utilities issued November 14, 2013, is not a valid notice to end the tenancy. Section 46(6) of the Act provides that if a tenancy agreement requires a tenant to pay utilities to the landlord and the utility charges are unpaid more than 30 days **after the tenant is given written demand for payment**, the landlord may treat the unpaid utilities as unpaid rent. In this case, the Landlord did not provide the Tenants with written demand and therefore may not treat the unpaid utilities as unpaid rent. This Notice is also cancelled.

I find that the One Month Notice to End Tenancy for Cause issued November 14, 2013, is a valid notice to end the tenancy. Section 26 of the Act requires rent to be paid on the day that it is due. There is no requirement in the Act for a Landlord to issue written warnings for unpaid rent before issuing a notice to end the tenancy. Residential Tenancy Branch Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under this provision. The Guideline also notes that a landlord who fails to act in a timely manner after the most recent late rent payment may be determined to have waived reliance on this provision. In this case, the Tenants were most recently late paying rent for October, 2013, and the Landlord issued the Notice on November 14, 2013. Therefore, I find that the Landlord acted in a timely manner.

I find that the Landlord is entitled to an Order of Possession based on the Notice for cause, issued November 14, 2013.

3. Is the Landlord entitled to a Monetary Order for unpaid utilities?

The oil tank has been topped up three times since the beginning of the tenancy. The total cost of oil to October 22, 2013, is \$1,802.96. The Tenants agreed that they have paid only \$1,450.00 of the cost of oil. Therefore I find that the Landlord is entitled to a monetary award for the unpaid oil bills, in the amount of \$352.96.

4. May the Landlord deduct her monetary award from the security deposit?

Further to the provisions of Section 72 of the Act, the Landlord may deduct \$352.96 from the security deposit. The balance of the security deposit, in the amount of \$347.04, together with the pet damage deposit in the amount of \$300.00 must be applied in accordance with the provisions of the Act.

I encourage both parties to make themselves acquainted with their rights and responsibilities under the Act. This Decision is accompanied by an information sheet including contact numbers and a link to the Residential Tenancy Branch's web site.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

Conclusion

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., January 1, 2014**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct the amount of \$352.96 from the security deposit.

The remainder of the security deposit and the pet damage deposit is available upon application by either party, to be applied in accordance with the provisions of the Act at the end of the tenancy.

I make no order with respect to the recovery of the filing fee for either party.

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: December 23, 2013

Residential Tenancy Branch

