



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, CNR, ERP

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that a representative of the landlord handed him the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 5, 2013. Landlord VES's representative (the agent) confirmed that the landlords received a copy of the tenant's dispute resolution hearing package handed to them on November 8, 2013. The agent testified that the landlords sent the tenant a copy of the landlords' dispute resolution hearing package by registered mail on November 27, 2013. Although the tenant said that he had not received the hearing package by registered mail, he testified that he had received a copy of that package and understood that the landlords had applied to end his tenancy and obtain unpaid rent. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

Although the agent testified that she had sent a copy of her written evidence package to the Residential Tenancy Branch (the RTB) on November 27, 2013, this faxed evidence was not received by the RTB. She said that she submitted this again by fax on December 4, 2013, evidence that was not before me at the time of this hearing. The only written evidence properly before me in advance of this hearing was a copy of the 10 Day Notice.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for their application from the tenant? Should any orders be issued against the landlords?

Background and Evidence

This periodic tenancy began on or about March 1, 2012. Monthly rent is \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$425.00 security deposit paid on or about February 20, 2012.

The landlords issued the 10 Day Notice because the tenant had not paid his \$850.00 rent for November 2013. The agent gave undisputed sworn testimony that the parties entered into a mutual agreement to end this tenancy on November 14, 2013, when the landlords paid the tenant \$200.00 and agreed to pay him another \$550.00 on November 15, 2013, if the tenant left the premises the following day. Although the landlords paid the tenant \$200.00, the tenant did not vacate the rental premises. Since the agent gave undisputed testimony that the tenant did not comply with the requirement that he vacate the rental unit, the landlords proceeded on the basis of the tenant's failure to pay anything further to the landlords since receiving the 10 Day Notice.

In his application for dispute resolution and at the hearing, the tenant maintained that the landlord had not installed a smoke alarm or a fire extinguisher, both required in a rental property. However, the tenant could not recall whether he paid anything towards either his November or December 2013 rent. He said that he may have placed money in an envelope in the landlord's mail slot, but he was not sure.

The agent testified that the tenant has made no payments to the landlord(s) for either November or December 2013. At the hearing, she revised the amount of the monetary award she was seeking from \$2,550.00, the amount stated on the application for dispute resolution, to \$1,700.00, the amount that remains owing.

Analysis

The tenant failed to pay the May 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. Although the tenant applied pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice to cancel that Notice, he did not provide satisfactory evidence that he had paid the amount identified as owing in the 10 Day Notice in full. As I am not satisfied that the tenant has paid the amount identified as owing in the 10 Day Notice in full, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence before me and on a balance of probabilities, I find that the landlords are entitled to a monetary award of \$850.00 in unpaid rent owing for each of November and December 2013, totalling \$1,700.00.

I allow the landlords to retain the tenant's \$425.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in this application, I also allow the landlords to recover their \$50.00 filing fee from the tenant. As this tenancy is ending shortly, I make no order with respect to the requested repairs.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2013 Rent	\$850.00
Unpaid December 2013 Rent	850.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,325.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with

these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 05, 2013

Residential Tenancy Branch

