



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF
CNR, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent or utilities / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent or utilities / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from April 15, 2013 to May 1, 2014. Monthly rent of \$988.00 is due and payable in advance on the first day of each month, and a security deposit of \$494.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Arising from rent which remained unpaid when due on January 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated January 07, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 17, 2014. Subsequently, the tenants filed an application to dispute the notice on January 10, 2014. Thereafter, on February 07, 2014 the tenants made a payment toward rent in the amount of \$500.00. However, the tenants have not currently made any additional payment toward rent and they continue to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent or utilities dated January 07, 2014. The tenants did not pay the full amount of outstanding rent within 5 days of receiving the notice, even while they filed an application to dispute the notice on January 10, 2014.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) 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 established that they have a right under the Act to deduct all or a portion of the rent. Following from all of the foregoing, the tenants' application for cancellation of the notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**.

As for compensation, I find that the landlord has established entitlement as follows:

\$638.00: (\$588.00 + \$50.00) *unpaid rent for December 2013 & mutually agreed \$50.00 for laundry-related use of hydro*

\$988.00: *unpaid rent for January 2014*

\$988.00: *unpaid rent for February 2014*

\$50.00: *filing fee*

Sub-total: \$2,664.00

MINUS: \$500.00: *payment by tenants on February 07, 2014*

Total: \$2,164.00

I order that the landlord retain the security deposit of **\$494.00**, and I grant the landlord a **monetary order** for the balance owed of **\$1,670.00** (\$2,164.00 - \$494.00)

Pursuant to a "Mutual Agreement to End a Tenancy" document signed on January 28, 2014, the parties are at liberty to continue the tenancy until March 15, 2014 in the event that they reach a mutually agreeable arrangement for payment of all outstanding rent.

By way of the landlord's notations on a "Monetary Order Worksheet" submitted in evidence, I find that the landlord has withdrawn a claim for additional costs in the total amount of \$649.04, as follows:

\$108.64: toilet
\$100.00: toilet repair
\$152.25: furnace service
\$288.75: pest control service

As the tenants have not succeeded in their application for cancellation of the notice to end tenancy, their application to recover the filing fee is also hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,670.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order 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: February 20, 2014

Residential Tenancy Branch

