



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR
For the landlord: FF, OPR, MNSD

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for authority to retain the tenants' security deposit, an order of possession for the rental unit due to unpaid rent, and for recovery of the filing fee.

The tenants, the landlord's agent (hereafter "landlord"), and the landlord's witness attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. The tenants acknowledged receiving the landlord's evidence; the tenants supplied no evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The landlord failed to mark on their application for dispute resolution that they were seeking monetary compensation for unpaid rent through error, although on their application the landlord sought a monetary order which was for unpaid rent. As I find that the landlord's clear intention was to seek monetary compensation for unpaid rent, I allowed the landlord's verbal request to amend their application seeking unpaid rent.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on June 1, 2013, monthly rent is currently \$770 payable on the first day of the month, and the tenants paid a security deposit of \$372.50 at the beginning of the tenancy.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenants were served with a 10 Day Notices to End Tenancy for Unpaid Rent on December 18, 2013, by attaching it to the tenants' door, listing unpaid rent of \$770 as of December 1, 2013. The effective move-out date listed was December 31, 2013.

The landlord asserted that since the issuance of the Notice, they have received just one further rent payment, that being a cheque in the amount of \$395 on January 2, 2014.

The landlord submitted that the amount of current unpaid rent owed by the tenants is \$1928.19, comprised of a rent deficiency of \$13.19 through November 30, 2013, a rent deficiency of \$375 for December 2013, unpaid rent of \$770 for January 2014, and \$770 for February 2014.

In response, the tenants submitted that the female tenant's portion of the monthly rent is paid from the social assistance ministry directly to the landlord and that that male tenant's portion of the rent is paid directly to the landlord from the disability office. The tenants further submitted that they have never been late in paying rent and have never missed payments of rent until the landlord's office address changed, without telling the separate payors.

The tenants further submitted that a rent cheque for December was issued to the landlord, so that the cheque was obviously lost or stolen. The tenants further submitted that the landlord's agent has refused to sign the bank forms for lost or stolen items.

The tenants additionally submitted that when they received the 10 Day Notice in December, the female tenant informed the social assistance office regarding the matter of alleged unpaid rent, resulting in the social assistance office issuing a cheque to the tenant. The tenants testified that the female tenant cashed that cheque, placed the cash for all of the rent in an envelope, and placed the envelope under the landlord's office door after hours, as instructed by the landlord's agent.

The tenants submitted also that another rent cheque for the month of February has been sent to the landlord, the week of the hearing.

The tenants stated that they gave the landlord their notice to vacate and were intending on vacating the rental unit by February 28, 2014.

In response, the landlord denied receiving a cash payment for rent in December, or any other rent payments as described by the tenants. The landlord also submitted that an answering service answers calls after hours from tenants, not an agent of the landlord.

In response to my question the landlord explained that they had purchased a new office space, but that all mail is being forwarded from all their former locations to their new office.

When called into the telephone conference call hearing, the landlord's witness, the agent who dealt with these tenants as building manager, denied receiving any cash for rent or the other cheques. The witness further stated that the tenant informed him he was going to the Ministry to inquire about the lack of rent payments, but that he never received any follow-up from the tenants.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within business five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, the tenants submitted that they paid the rent for December 2013 immediately after receiving the Notice; however the alleged payment was in cash in an envelope and placed under the landlord's office door after hours. Therefore there is no record of payment and the landlord, who had detailed records of other payments, denied receiving the cash payment.

In weighing the evidence of both parties regarding the December rent payment, I prefer the evidence of the landlord over the tenants. In reaching this conclusion I considered that the tenants had 5 days from the date they received the Notice on December 18 to pay the rent, yet, according to the tenants, they chose to place cash under the landlord's door at night on December 19, with the associated risk of not handing the cash to a representative and being issued a receipt. I also considered that the tenants

presented no evidence that they were issued another cheque from the social assistance office or that a cheque was cashed.

I further considered that although the tenants said that they could present evidence from the social assistance office or the disability office that other rent cheques were issued, the tenants failed to present such evidence.

Due to the above, I find that the landlord submitted sufficient evidence that the tenants owed the landlord rent when the Notice was issued and that the tenants did not pay all or any of the rent owed to the landlord within five days of receiving the Notice as the tenants failed to convince me they paid rent for December 2013, with the landlord receiving partial rent for December on January 2, 2014.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

I find the landlord submitted sufficient evidence that the tenants owe the amount of \$375 for unpaid rent for December 2013 and \$770 for January 2014 as I find that the tenants presented no evidence that any such payments have been made.

I also find the landlord submitted sufficient evidence that the tenants owed an accumulated rent deficiency through November 30, 2013, in the amount of \$13.19.

As to the rent for February 2014, the tenants testified that their rent cheques had been sent to the landlord the week of the hearing. As I have no way of confirming this information due to the tenants' lack of documentary evidence, I also award the landlord unpaid rent of \$770 for February 2014.

I allow the landlord recovery of the filing fee due to their successful application.

Due to the above, I find the landlord is entitled to a monetary award in the amount of \$1978.19, comprised of outstanding rent of \$1928.19 through February 2014, as described above, and the \$50 filing fee paid by the landlord for this application.

Tenants' application:

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application has been successful.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I allow them to retain the tenants' security deposit of \$372.50 in partial satisfaction of their monetary award of \$1978.19, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1605.69, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

The landlord is advised that the monetary order is to be reduced by any amounts which they may receive on behalf of the tenants after the date of the hearing.

The tenants' application is dismissed, without leave to reapply.

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 11, 2014

Residential Tenancy Branch

