



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that the landlord handed them the 10 Day Notice on January 2, 2014. The landlord confirmed that on January 19, 2014, he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on January 8, 2014. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The tenants confirmed that they received a copy of the landlord's written evidence. I am satisfied that this evidence was submitted in accordance with the *Act*.

On February 13, 2014, the Residential Tenancy Branch (the RTB) received a copy of 9 pages of written evidence and three CDs from the tenants. The landlord testified that he did not receive this evidence from the tenants. Initially, the tenants testified that the female tenant sent this evidence to the landlord by registered mail. When questioned as to the date when the female tenant sent this package to the landlord, the tenants responded that they had included the Canada Post Tracking Number with their written evidence package. On reviewing the Canada Post Tracking Numbers, it became apparent that one of the numbers provided by the tenants referred to a previous dispute

arbitration hearing that occurred in July 2013. The second Canada Post Tracking Number was for the service of the dispute resolution hearing package, which was sent by registered mail on January 8, 2014. After some discussion between the tenants, the male tenant reported that the female tenant had been mistaken and that the tenants did not send a copy of their written evidence or the CDs to the landlord. As the tenants did not send copies of their written or CD evidence to the landlord, I advised them that I could not consider their written or CD evidence in reaching my decision.

At the commencement of this hearing, the landlord and his assistant advised that the landlord was seeking an end to this tenancy and the issuance of an Order of Possession for unpaid rent if the tenants' application were dismissed.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to a monetary award for losses or damages arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on the basis of a periodic tenancy on August 1, 2011. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$400.00 security deposit paid on or about July 26, 2011.

The landlord's 10 Day Notice entered into written evidence identified \$2,700.00 in unpaid rent owing as of January 2, 2014. On the 10 Day Notice, the landlord noted \$300.00 in rent owing from October 2013, and \$800.00 for each of November and December 2013, and \$800.00 for January 2014. The landlord entered into written evidence a statement maintaining that the tenants' failure to pay rent for February 2014 has further increased the amount of outstanding rent from this tenancy to \$3,500.00. He testified that the tenants have not made any further payment since he handed them the 10 Day Notice.

I heard conflicting testimony from the parties with respect to a series of receipts entered into written evidence by the landlord.

The landlord and his assistant testified that the landlord prepared and provided receipts to the tenant for all payments by the tenants. The receipts entered into written evidence by the landlord covered payments made between July 8, 2013 and December 14, 2013, the date when the landlord testified the tenants made their last payment to the landlord. The landlord testified that he received payments in the amounts of \$800.00 on

September 20, 2013, \$800.00 on October 21, 2013, \$700.00 on November 29, 2013, and \$200.00 on December 14, 2013. On each receipt, the landlord provided a breakdown of which month's rent these payments were being applied against. The landlord's assistant also gave sworn testimony that he witnessed the landlord accept the above payments from the tenant(s). He also gave sworn testimony that he watched the landlord issue the written receipts entered into written evidence by the landlord to the tenant who made each of the above payments on each of the above occasions.

The male tenant first testified that the tenants had entered into written evidence copies of the only receipts issued to them by the landlord and that these receipts did not match with the landlord's written evidence. When I could not locate these receipts in the tenants' written evidence submission, the male tenant revised his testimony to say that the receipts entered into written evidence by the landlord were incorrect and not the ones issued to the tenants. The male tenant testified that the tenants paid \$1,700.00 in cash to the landlord in November 2013, and a further \$200.00 in December 2013. He testified that the landlord refused to give him a receipt for these cash payments. He confirmed that the tenants did not pay their January 2014 rent until they paid the landlord \$700.00 on January 10, 2014, as per an arrangement he said that the landlord had reached with the tenants. He said that the landlord told them in November 2013, that their rent was fully paid as of that month.

The female tenant testified that the landlord frequently "backdated" receipts. She gave sworn testimony that the tenants paid the landlord \$1,700.00 in cash on November 4, 2013. She said that the landlord did not provide the tenants with any receipt for this cash payment. When questioned as to her evidence that the tenants had that amount of cash to pay to the landlord at that time, the female tenant modified her sworn testimony, claiming that the tenants gave the landlord \$700.00 in cash on October 29, 2013, and a further \$1,000.00 in cash on October 31, 2013. At one point, the female tenant said that the landlord did not give receipts. Later in the hearing, she said that the landlord gave out receipts "in bits and pieces."

The tenants testified that the \$2,400.00 they were seeking as a monetary award was for the difficulties they have experienced with the landlord and with former tenants who lived beside them, but were evicted by the landlord at the end of October 2013. Although the tenants who lived next to them have been gone from the rental property for some time, the tenants claimed that it took the landlord too long to take action to obtain their eviction. The male tenant said that the tenants have had to call the police many times about the former tenants who lived beside them. He said that the tenants who lived beside them were always fighting and that their actions reduced their quiet

enjoyment of the rental premises. The female tenant testified that the landlord has frequently yelled and sworn at her husband, the male tenant.

The landlord denied the tenants' claims that he has not provided them with receipts. He gave sworn testimony that the tenants have not paid anything to him since their \$200.00 payment on December 14, 2013. He also denied that he had any form of agreement with the tenants allowing them until January 10, 2014 to make a further rent payment. He denied the tenants' claim that they have paid him \$700.00 on January 10, 2014.

Analysis

As outlined above, I heard conflicting testimony from the parties regarding what has been paid in the recent months of this tenancy and when. While the landlord entered into written evidence detailed receipts of the tenant's rent payments, witnessed by his assistant at this hearing, the tenants' account of their payments changed frequently during the course of this hearing. Neither tenant provided consistent sworn testimony with respect to the dates and amounts of their alleged payments to the landlord. I find the female tenant's sworn testimony particularly unreliable as she gave different testimony regarding the \$1,700.00 allegedly paid to the landlord on each occasion she described this payment or payments. Separate from the extreme unreliability of the tenants' sworn testimony, I find on a balance of probabilities it highly unlikely that a tenant would pay \$1,700.00 in cash to a landlord without obtaining some form of receipt for such a large payment (or payments).

Even if I were to accept the tenants' sworn testimony, which is by no means the case, both tenants gave sworn testimony that they did not pay any portion of their January 2014 rent until January 10, 2014, more than five days after they were handed the landlord's 10 Day Notice on January 2, 2014. While the landlord denied having received any such payment on January 10, 2014, both tenants gave sworn testimony that they failed to pay the amount identified in the 10 Day Notice, including their January 2014 rent, within five days of receiving the 10 Day Notice to End Tenancy. Although the tenants applied for dispute resolution within five days of receiving the 10 Day Notice, I find that the tenants have not provided evidence to demonstrate that there was no rent owing as of the fifth day after they received the 10 Day Notice. Under these circumstances and based on a balance of probabilities, I dismiss the tenants' application to cancel the landlord's 10 Day Notice without leave to reapply.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of*

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As the tenants' application to cancel the 10 Day Notice is dismissed, I allow the landlord's oral request for an Order of Possession, pursuant to section 55(1) of the *Act*. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damages or losses result from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the losses or damages. In this case, the onus is on the tenants to demonstrate their losses.

I find little substance to the tenants' application for a monetary award. They provided no written evidence that could be considered at this hearing. Although the tenants would have preferred that the landlord's actions to end the tenancy of those who were living beside them earlier than occurred, the landlord was successful in ending that tenancy for cause. I find that the tenants have not submitted sufficient evidence to demonstrate their entitlement to any form of a monetary award against the landlord, nor should any order be issued against the landlord. I dismiss the tenants' application for a monetary award without leave to reapply.

As the tenants have been unsuccessful in their application, they bear the cost of their filing fee for this application.

Conclusion

I dismiss the tenants' application to cancel the 10 Day Notice and allow the landlord's oral request for an end to this tenancy and the issuance of an Order of Possession. I

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

I dismiss the remainder of the tenants' application 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 24, 2014

Residential Tenancy Branch

