



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDORDS: OPR, MNR, MNSD, FF
TENANTS: CNR, MNDC, RP, RR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to do general repairs to the unit site or property, for a rent reduction and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on March 14, 2014 in accordance with section 89 of the Act.

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Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenant's security and pet deposits for unpaid rent?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there loss or damages to the Tenant and if so how much?
3. Are the Tenants entitled to compensation for loss or damage and if so how much?
4. Are there repairs to be done?
5. Are the Tenants entitled to a rent reduction and if so how much?

Background and Evidence

This tenancy started on November 1, 2013 as a month to month tenancy. Rent is \$1,900.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$950.00 and a \$50.00 pet deposit on November 1, 2013. A move in condition report was complete on November 1, 2013.

The Landlord said that the Tenants had unpaid rent in the amount of \$1,900.00 for each month of March, 2014 and April, 2014. In addition the Landlords said they are requesting loss of rental income of \$1,900.00 for the month of May, 2014 if they are successful in ending the tenancy as they will not be able to rent the unit until June 1, 2014.

In addition the Landlord said they are requesting to retain the security deposit of \$950.00 and the pet deposit of \$50.00 as partial payment of the unpaid rent.

The Landlord also said they are seeking to recover the \$50.00 filing fee for this proceeding. The Landlords said their total claim is for \$3,800.00 in unpaid rent, \$1,900.00 in lost rental income and the \$50.00 filing fee for a total claim of \$5,750.00.

The Tenant said they did not pay the March and April rent as the Landlord has not repaired items in the rental unit. The Tenant continued to say the stove, frig, dishwasher and both bathrooms needed repairs and the Landlord has not done them. The Tenants said they withheld the rent because the repairs were not done. The Tenants requested \$250.00 for each month of the tenancy for the appliances not working.

The Tenant agreed that she signed the condition inspection report November 1, 2013, which indicates no issues in the rental unit and no repairs being needed. The Landlord said all the appliances were working on move in and the Tenants did not indicate to the Landlord any problems with the appliances until the Tenants application was made.

The Tenant continued to say that they should be compensated for loss of quiet enjoyment of the rental unit because the Landlord harassed them. The Tenants submitted two letters from witnesses to support this allegation. It should be noted the letters are signed but are not witnessed or notarized and the letter writers did not

appear as witnesses during the hearing. As well the Tenants have not specified an amount of compensation for their claim of loss of quiet enjoyment of the rental unit.

The Tenant said in closing that they want to move out as this situation is not something that they want to continue with.

The Landlord said in closing they are requesting an order of possession for as soon as possible and there is \$5,700.00 in unpaid rent and lost income.

Analysis

Section 26 (1) of the Act says 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 paid the overdue rent and the Tenants did not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants' application to Cancel the Notice to End Tenancy for Unpaid Rent, as they agree that there is unpaid rent that has been withheld from the Landlord.

I accept the Landlord's testimony and evidence that there is unpaid rent in the total amount of \$3,800.00 for March and April, 2014. I further find that the Landlord is entitled to recover a loss of rental income to May 15, 2014; in the amount of \$950.00 representing half a month's rent. The Landlord has an obligation to mitigate their damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. Consequently, I find for the Landlords and award the Landlords a monetary claim for unpaid rent and lost rental income of \$4,750.00.

Further, I find that the Tenants have not paid the overdue rent and have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

In addition the Tenants accepted the rental unit as stated in the move in condition inspection report dated November 1, 2013 and there is no documentation that indicates the appliances were not working; therefore I dismiss without leave to reapply the Tenants' claims for compensation for loss of use of the appliances and the bathrooms. As well since the tenancy is ending and there is no evidence that repairs were needed; I dismiss the Tenants' request for a rent reduction.

With respect to the Tenants claim for loss of quiet enjoyment of the rental unit I find there is a lack of evidence to justify this claim and as a result I dismiss the claim without leave to reapply.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the \$50.00 filing fee that they have already paid.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security and pet deposits in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$3,800.00	
	Lost rental income	\$ 950.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$4,800.00
Less:	Security Deposit	\$ 950.00	
	Pet Deposit	\$ 50.00	
	Subtotal:		\$1,000.00
	Balance Owing		\$ 3,800.00

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$3,800.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 29, 2014

Residential Tenancy Branch

