



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPB, MND, MNR, MNSD, MNDC, FF
 Tenants: CNR, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order. The hearing was conducted via teleconference and was attended by the landlords and their legal counsel and the female tenant.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy for unpaid rent and a monetary order for compensation for issues during the tenancy, I find that the monetary order sought is unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenants' Application seeking a monetary order, with leave to reapply at a future date.

Likewise, the landlord has submitted an Application seeking to end the tenancy based on the non-payment of rent and for damage to the rental unit. I find the matter of damage to the rental unit is unrelated to the issues raised in the notice to end tenancy. I therefore dismiss this portion of the landlord's Application, with leave to reapply at a future date.

In addition, the landlords sought to recover an additional \$25.00 fee paid to have the files "joined". However, "joined" files are files of two or more parties with similar circumstances against another third party. These files were actually "cross applications" and there is no charge for "crossing applications". As such, I amend the landlords' Application to exclude this issue and refer the landlords to the Residential Tenancy Branch to pursue a refund.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute

Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlords submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 21, 2013 for a 1 year and 1 day fixed term tenancy beginning on June 1, 2013 for a monthly rent of \$1,000.00 due on the 1st of each month with a pet damage deposit and security deposit totalling \$700.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 12, 2014 with an effective vacancy date of February 23, 2014 citing the tenant had failed to pay rent in the amount of \$1,000.00 due on February 1, 2014.

The landlords submit the tenants failed to pay the full rent owed for the month of February 2014 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on February 12, 2014 and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full but did apply to dispute the Notice to End Tenancy within five days. The tenant submitted her Application for Dispute Resolution to dispute the Notice on February 14, 2014.

The landlord acknowledges receipt of payment of \$375.00 from the Ministry of Social Development and Social Innovation for a portion of February 2014 rent. The landlord submits that this payment was received in March 2014.

The female tenant submits that male tenant had assured her that rent for February 2014 had been paid to the landlord. She states she was not aware that February rent had not been paid until the male tenant provided her with the Notice to End Tenancy that the landlord has given to him and he moved out of the unit.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Despite the tenant's circumstances Section 26 of the *Act* requires tenants to pay rent in accordance with the terms of the tenancy agreement unless they have authority under

the *Act* to withhold payments. Such authority might include the payment of emergency repairs that the landlord has failed to make; an overpayment of a security deposit; or based on an order provided by the Residential Tenancy Branch.

As the tenant has no such authority to withhold any amounts of rent I find the landlord is justified in ending the tenancy in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 12, 2014.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,775.00** comprised of \$2,725.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security and pet damage deposits held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,075.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 09, 2014

Residential Tenancy Branch

