



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and losses arising out of this tenancy pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for the cancellation of the landlords' 10 Day Notice pursuant to section 46 of the *Act*.

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 male tenant (the tenant) confirmed that the landlord handed him the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on May 2, 2014. The landlords confirmed that the tenants handed the male landlord a copy of their dispute resolution hearing package on May 7, 2014. The male tenant confirmed that the landlords handed him copies of the landlords' dispute resolution hearing package on May 14, 2014. The female tenant confirmed that she also received a copy of this hearing package. Both tenants also confirmed that they had received copies of the landlords' written evidence handed to the male tenant on June 10, 2014. I find that the parties served one another with the above documents in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On November 23, 2013, the parties signed a six-month fixed term Residential Tenancy Agreement (the Agreement) commencing on December 1, 2013. Monthly rent is set at \$725.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$362.50 security deposit paid on November 4, 2013.

The landlords applied for a monetary award of \$2,490.00. This amount included the following items:

| Item | Amount |
|------------------------------------|-------------------|
| Unpaid Rent April 2014 | \$190.00 |
| Unpaid Rent May 2014 | 725.00 |
| Unpaid Rent June 2014 | 725.00 |
| Loss of Rent July 2014 | 725.00 |
| Late Fees (5 x \$25.00 = \$125.00) | 125.00 |
| Total Monetary Order | \$2,490.00 |

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The tenant fully acknowledged that the tenants did not pay any rent to the landlords after the landlords issued their 10 Day Notice. The tenant maintained that the landlords owed the tenants for damage caused to the tenants' possessions, for lost wages, for the time they had to spend cleaning up the rental suite after the flood of January 10, 2014 occurred, for the health problems caused by the flooding incident and for their loss of quiet enjoyment during the lengthy period of repairs undertaken by the landlords to resolve the flooding problems. The tenants produced no written evidence and relied solely on abbreviated portions of text messages entered into written evidence by the landlords, which revealed little as to any actual losses incurred by the tenants. I also heard undisputed sworn testimony from the female landlord, supported by her written evidence that the flooding incident occurred on January 10, 2014, but was not reported to the landlords until January 12, 2014.

At the hearing, the tenant questioned why the landlords had not advised them prior to their commencement of this tenancy that this basement rental unit was prone to flooding so as to alert them that they should be taking out tenant's insurance. The female landlord (the landlord) confirmed that there had been a previous flooding incident on September 22, 2013. However, she noted that she had provided written evidence outlining extensive work undertaken at that time to resolve the flooding issues experienced at that time. She testified that the landlords believed that the work they had undertaken following the September 2013 had resolved the flooding problem. I find that the landlord gave a logical and reasonable explanation as to why the landlords believed that they had corrected any the problem that caused the September

2013 flooding problem. They entered into written evidence a copy of the January 10, 2014 weather forecast, which confirmed that a rainfall warning was in effect for this community that night. Under the circumstances of an unusual amount of rainfall on the night of January 10, 2014 and the landlords' belief that they had corrected the flooding problem in this rental property, I find that the landlords were under no obligation to inform the tenants that they should be taking out tenants' insurance to cover them for any potential flooding losses. Tenants bear the responsibility for failing to obtain tenants' insurance; this is not a responsibility that is borne by the landlords.

Section 32(1) of the *Act* assigns a landlord the obligation to repair and maintain rental property. I find that the landlords met this obligation by taking measures that they and the plumbing contractor believed would be sufficient to alleviate the September 22, 2013 flooding incident at this rental property. I also find undisputed evidence that the landlords acted promptly to retain a contractor to resolve the drainage problem that caused the flooding incident of January 10, 2014. I find that the landlords have met their responsibilities as outlined in section 32(1) of the *Act*.

I have also considered the tenants' assertion that the landlords are responsible for losses they incurred as a result of the flooding incident of January 2014. While the tenant claimed that the tenants have suffered losses, he produced no receipts, invoices, photographs, pay stubs, health care records, or anything else other than his sworn oral testimony to demonstrate that the tenants incurred any actual losses resulting from the flooding incident. When asked about this lack of evidence, the tenant referred me to the landlords' evidence, primarily in the form of abbreviated text messages, the import of which escapes me.

Section 28 of the *Act* establishes that a tenant is entitled to quiet enjoyment of the rental premises, and freedom from unreasonable disturbance. Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

At the hearing, the landlord testified that the contractors estimated that the repair work would take eight days. She said that due to weather delays, etc., it actually took 82 days to complete this work. While this work was no doubt not happening every day, I accept the tenant's assertion that there was an extended period of drilling, repair work and disruption caused by the contractors' extended work to repair this rental property. For this reason and in accordance with section 65(1)(f) of the *Act*, I allow the tenants to reduce their monthly rent by 10% for a two month period of this tenancy, as I accept that the tenants did suffer a loss of quiet enjoyment of their premises during a two month period of these repairs roughly equating to the period from February 1, 2014 until March 31, 2014. I do as I find that it took the landlords and their contractor a very long time to complete the drainage repairs so as to prevent a recurrence of the flooding problems that occurred on January 10, 2014. This results in an overall reduction in rent owed for this tenancy of \$145.00 (2 months @ \$72.50 = \$145.00).

I find no merit in any of the tenant's other explanations for why the tenants should not have had to pay monthly rent to the landlords over the past months. Issues raised by the tenant at the hearing (e.g., whether or not this is a legal rental unit; whether electrical fixtures are properly installed) have little bearing on whether or not the Agreement required the tenants to pay rent when rent was due. Section 26(1) of the *Act* establishes that "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."

With the exception of the \$145.00 reduction awarded as a result of the tenants' loss of quiet enjoyment of their tenancy due to the delays in the repair work undertaken by the landlords, I find that the tenants had no other legitimate reason to withhold any portion of their rent during this tenancy. I thus find that there is undisputed evidence that the tenants failed to pay the May 2014 rent in full within five days of receiving the 10 Day Notice to End Tenancy. Although the tenants applied to cancel the 10 Day Notice pursuant to section 46(4) of the *Act* within five days of receiving that Notice, I am not satisfied that they had the legal right to withhold paying all of their monthly rent as set out in their Agreement at that time. In accordance with section 46(5) of the *Act*, the tenants' failure to pay all of the rent (less the \$145.00 noted above) identified as owing in the 10 Day Notice within five days of receiving the 10 Day Notice led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 12, 2014. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I find undisputed evidence that the tenants owe \$190.00 in rent from April 2014, and \$725.00 for each of May and June 2014. I issue monetary awards to the landlord to recover this unpaid rent and to obtain the recovery of the five late fees of \$25.00 each owing from February, March, April May and June 2014. The landlords have submitted sufficient undisputed evidence that this late fee was contained within section 14 of the Addendum attached to the Agreement, and that the tenants were late in paying their rent in full for all five of these months.

It remains unclear as to whether the landlords will be able to locate new tenants for the last half of July 2014. For that reason, I award the landlords \$362.500 in anticipated loss of rent for the first half of July 2014. I dismiss the landlords' application for a monetary award for the second half of July 2014, with leave to reapply.

I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued to the landlords. No interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their filing fee from the tenants. As the tenants have been primarily unsuccessful in their application, they bear their own costs of filing their application.

Conclusion

I grant an Order of Possession to the landlords 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 issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent (less an amount for the tenants' loss of quiet enjoyment of the premises), their loss of rent for the first one-half of July 2014, plus late fees from April until June 2014, to recover their filing fee, and to retain the tenants' security deposit:

| Item | Amount |
|--|-------------------|
| Unpaid Rent April 2014 | \$190.00 |
| Unpaid Rent May 2014 | 725.00 |
| Unpaid Rent June 2014 | 725.00 |
| Loss of Rent –First Half of July 2014 (50% x \$725.00 = 362.50) | 362.50 |
| Less Loss of Quiet Enjoyment (2 months @ \$72.50 = \$145.00) | -145.00 |
| Late Fees (5x \$25.00 = \$125.00) | 125.00 |
| Less Security Deposit | -362.50 |
| Landlords' Filing Fee | 50.00 |
| Total Monetary Order | \$1,670.00 |

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for a monetary award for loss of rent for the final half of July 2014 is dismissed with leave to reapply.

I dismiss 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: June 30, 2014

Residential Tenancy Branch

