



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF
 CNR RR O MNDC LRE LAT FF

Preliminary Issues

Residential Tenancy Rules of Procedure Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenants' request to set aside, or cancel the Landlord's Notice to End Tenancy issued for unpaid rent and I dismiss the balance of the Tenants' claim with leave to re-apply.

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, as supported by their written statement indicating they were seeking rent for "April = 1460, May= 1460, June = 1460 total 4380" on his amended application.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearly indicated his intention of seeking to recover the payment for rent from April through to June. Therefore, I amend the application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed his initial application on April 24, 2014 and the amended application on April 28, 2014, seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent, to recover the cost of the filing fee from the Tenants for this application; and as amended above to include the request for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Tenants filed their application on April 22, 2014, seeking an Order to set aside or cancel a Notice to end Tenancy for unpaid rent.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of the evidence, the Tenants argued that they did not receive the following two pieces of the Landlord's evidence, (1) a copy of a monetary order granted to the Tenants' former landlord; and (2) the Hydro Notice of Disconnection. The Landlord provided affirmed testimony that he served the Tenants with the exact same evidence as was provided to the *Residential Tenancy Branch*.

Upon review of the Tenant's evidence package I note that they provided a copy of the hydro disconnection notice dated April 3, 2014. Therefore, I will consider the copy that was provided in the Tenants' evidence. The monetary order from an unrelated tenancy matter will not be considered in my decision as the order itself is not relevant to the matters before me. I did however; consider the Landlord's testimony relating to the Tenants' tenancy history.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy issued April 15, 2014, be upheld or cancelled?
2. If cancelled, is the Landlord entitled to an Order of Possession?

3. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 1, 2013 and was scheduled to end on September 30, 2014. The Tenants are required to pay rent of \$1,460.00 on the first of each month and on September 20, 2013 the Tenants paid \$730.00 as the security deposit.

The Landlord submitted copies of two 10 Day Notices to end tenancy for unpaid rent, one issued March 29, 2014 for the March unpaid rent and the second one issued April 15, 2014, for the April unpaid rent. The Landlord stated that the March rent was paid in full seven days after serving the first Notice; however no rent has been received for April, May, or June 2014 rent.

The Landlord testified that when they first entered into the tenancy agreement the Tenants were required to pay for hydro. He said the Tenants told him that they could not put the hydro in their name because they had an outstanding balance owing on a previous account and requested the Landlord put the hydro in his name. He agreed to put the account in his name and made arrangements for the hydro bill to be mailed to the rental unit address, where the Tenants would receive the bills and pay them.

The Landlord said he received notification that the hydro was disconnected in January 2014 and that he agreed to pay a security deposit to get the hydro turned back on for the Tenants, but they were supposed to pay the bills. Then in April he received another notice that the hydro would be turned off.

The Landlord testified that when the Tenants began these problems he decided to track down their former landlord and was able to find out that the Tenants had refused to pay hydro and rent to their previous landlord, just like they were doing to him.

The Tenants testified and confirmed that they received the 10 Day Notices and they did not pay rent for April, May, or June 2014. They argued that they did not pay rent because they did not have hydro. Then they stated that they did not pay April rent because they knew hydro was going to be turned off again.

The Tenants stated that their hydro had been turned off in January 2014 and they did not make application for dispute resolution at that time because they did not want to wait for a hearing date. They said that they sought the assistance of their MLA and from an employee at Income Assistance, who allegedly told them they did not have to pay hydro because the tenancy agreement included hydro. They said that the Income Assistance person called the Landlord and told him to put the hydro in his name. The Tenants stated that they did not have proof of these events because they did not have a file with Income Assistance so no records were kept.

The Tenants argued that they did not receive a copy of the hydro disconnection notice dated April 3, 2014 and they did not know how much money was owed to hydro. They stated that they chose not to pay the hydro bill and seek assistance at the hearing, because hydro would not give them a receipt and would not tell them how much was outstanding because the account was not in their name.

The Tenants testified that they received the hydro disconnection notice at the same time they received the 10 Day eviction Notice and it was their fear that they would pay rent and then have no hydro. Also, they attempted to pay their rent but the Landlord refused to give them a receipt so they did not want to take a chance on being evicted.

The Tenants submitted that the hydro was disconnected for the second time and on May 26, 2014, they moved into a motel which costs \$563.50 per week. They did not want to put that money towards hydro because hydro refused to tell them how much money was owed. They later stated that hydro told them the outstanding balance was less than \$1,000.00. They argued that the *Residential Tenancy Branch* would not give them an emergency hearing and they could not afford to pay both rent and hydro. They did not want to risk paying for hydro and still get evicted so they chose to pay for the motel.

In closing, the Tenants confirmed that they still have all of their possessions at the rental unit and wish this tenancy to continue.

The Landlord disputed the Tenants' testimony and said no one from Income Assistance or the MLA's office ever contacted him. He is seeking the Order of Possession and the Monetary Order.

Analysis

Upon review of the foregoing, the documentary evidence, and on a balance of probabilities I find as follows:

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants confirmed receipt of the 10 Day Notice dated April 15, 2014 and they filed their application to dispute the Notice on April 22, 2014. The Notice is deemed to be received on April 18, 2014, three days after it was posted to her door, and the effective date of the Notice is **April 28, 2014**, in accordance with section 90 of the Act.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; regardless of any disputes they may have with their landlord.

Section 33 of the Act provides that repairs to electricity (hydro) is considered an emergency repair and a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, it was undisputed that rent was not paid for April, May or June, 2014. I do not accept the Tenants' argument that they did not pay rent due to the hydro getting cut off. That is because rent was due April 1st and the hydro disconnection notice was not issued until April 3, 2014. Furthermore, the Tenants' testimony was filled with contradictions about why they could not pay the hydro of \$864.97 (the amount listed on the disconnection notice provided in evidence by the Tenants), as an emergency expense and deduct it from the rent of \$1,460.00.

Accordingly, I find there to be sufficient evidence to uphold the 10 Day Notice issued April 15, 2014, and I hereby grant the Landlord an Order of Possession and dismiss the Tenants' request to cancel the Notice.

The Landlord has applied for \$1,460.00 of unpaid rent that was due April 1, 2014, as listed on the 10 Day Notice. As noted above the undisputed evidence confirms rent was not paid for April 2014. Accordingly, I grant the Landlord's claim for April rent of **\$1,460.00**.

As noted above this tenancy ended **April 28, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May and June 2014, not rent. The Landlord will not gain possession of the unit until service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of May and June 2014, in the amount of **\$2,920.00** (2 x \$1,460.00).

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

The Tenants have not been successful with their application; therefore, I decline to award recovery of their filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$4,430.00** (\$1,460.00 + \$2,920.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' request to cancel the 10 Day Notice is HEREBY 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: June 18, 2014

Residential Tenancy Branch

