



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPB, MNR, MNSD, MND, MNDC, FF
Tenant: CNR, RP, LAT, RR, ff

Introduction

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

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, compensation for damage to the unit, site or property, compensations for loss or damage under the Act, regulations or tenancy agreement, 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, for the return of the security and pet deposits, to make repairs to the rental unit, to allow the tenant to change the locks of the rental unit, to allow the Tenant reduced rent while the repairs are being completed and to recover the filing fee.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on May 27, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on May 23, 2014 in accordance with section 89 of the Act.

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

It should be noted that the Landlord objected to the Tenant's support person being allowed at the hearing. The Landlord said the support person is also a tenant of his with a dispute filed and he thought this may be prejudicial to him. The Arbitrator accepted the Tenant's support person as the Tenant indicated the support person was only there as support and she would not be given any testimony.

Further the Landlord sent in a large evidence package late which was not accepted by the Arbitrator for this hearing as the Tenant did not have time to review it properly. The late evidence was dismissed from the hearing.

Further the Tenant M.H. said she was acting for the other tenant in this tenancy M. O.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenants' security and pet deposits?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there repairs to be done to the unit, site or property?
3. Are the Tenants entitled to change the locks on the unit?
4. Are the Tenants entitled to a rent reduction while repairs are completed?

Background and Evidence

This tenancy started on December 1, 2013 as a fixed term tenancy with an expiry date of November 30, 2014. Rent is \$638.33 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$312.50 and a pet deposit of \$100.00 on November 16, 2013.

The Landlord said that the Tenant had unpaid rent in the amount of \$638.33 plus arrears on May 7, 2014 so the Landlord issued a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 7, 2014. The Landlord said he registered mailed the Notice to End Tenancy on May 8, 2014 and posted it on the door of the Tenants' rental unit on May 11, 2014. The Landlord said the Tenants have unpaid rent for January, 2014 of \$50.00, for February, 2014 of \$79.33, for March, 2014 of \$78.33, for April, 2014 of \$188.33, for May, 2014 of \$638.33, for June, 2014 of \$638.33 and for July, 2014 of \$638.33. The Landlord said his total unpaid rent claim is \$2,311.15. The Landlord continued to say the Tenants have unpaid rent and he requested an Order of Possession for as soon as possible.

The Landlord also requested an administration fee of \$100.00 and a liquidated damages fee of \$100.00 that are both in the tenancy agreement in clauses 5 and 8 respectively.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$2,561.15

The Tenant said the rental unit is in a state of poor repair and when they asked the Landlord to make repairs he did not do anything. As a result the Tenant said she withheld rent because the repairs were not completed. The Tenant said there was unpaid rent but she did not know how much.

The Tenant continued to say that there are many issues with the Landlord and she requested more time to consult a lawyer. The Arbitrator said that because this hearing is about unpaid rent and both parties agree there is unpaid rent there is no need to adjourn the hearing for legal opinions.

The Tenant said she could not afford to make repairs to the unit and pay for the repairs at the same time so she did not pay the rent. The Tenant did not provide any paid receives to support any claims for work done to the rental unit.

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 do not have the right to withhold a part or all of the unpaid rent. The Tenants' application to dispute the Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply. Consequently, I find for the Landlord and award the Landlord an Order of Possession.

I find pursuant to s. 55 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.

I also find that the Landlord is entitled to recover unpaid rent for the period of January, 2014 to July, 2014 in the amount of \$2,311.15.

Further I award the Landlord the \$100.00 administration fee and the \$100.00 liquidated damages fee as both are in the tenancy agreement and both parties agreed to the fees at the start of the tenancy.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,311.15	
	Fees	\$ 200.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,561.15
Less	Security deposit	\$ 312.50	
	Pet deposit	\$ 100.00	
	Subtotal		\$ 412.50
	Balance Owing		\$2,148.65

With respect to the Tenants application and since the tenancy is ending due to unpaid rent I dismiss without leave to reapply the Tenants requests for repairs to the unit, to change the locks and for a rent reduction.

As the Tenants have been unsuccessful in this matter they are ordered to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,148.65 have been issued to the Landlord. 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: July 15, 2014

Residential Tenancy Branch