



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RP, ERP, PSF, RR, MNR, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, requesting the landlord be ordered to make repairs, emergency repairs, to provide facilities or services required by law, compensation for damage or loss under the Act and an Order allowing the tenants to reduce rent owed.

The landlord applied requesting an Order of possession for unpaid rent, compensation for damage or loss under the Act and unpaid rent and to recover the filing fee costs from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenants said they had written a letter to the Residential Tenancy Branch (RTB) asking that sixty-two pages of evidence from a previous hearing be transferred to this hearing. I explained that transfer of evidence does not occur and that parties are required to make their own evidence submissions for each hearing. The landlord had not been served with any evidence.

The landlord said that he personally served the tenants his 3 page evidence submission that was given to the RTB on June 27, 2014. The tenants said they did not receive any evidence from the landlord. Therefore, in the absence of corroborating evidence of service the landlord's evidence was set aside. The landlord was at liberty to provide testimony.

The tenants indicated several matters of dispute on their application, including a monetary claim. No detailed calculation of the claim was provided. Further, for disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue, the end of the tenancy, to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel

the Notice to end tenancy for unpaid rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Mutually Settled Agreement – End of Tenancy

The Act provides:

Opportunity to settle dispute

63 (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

The parties agreed that the tenancy will end on July 31, 2014 at 1 p.m. The tenants and landlord agreed that the landlord should be provided an Order of possession effective on that date.

Therefore, in support of the mutually settled agreement I find that the tenancy will end effective July 31, 2014 at 1 p.m. The landlord has been granted an Order of possession that is effective **at 1 p.m. on July 31, 2014**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Landlord Claim – Unpaid Rent

The parties agreed that the tenancy commenced 5 years ago. Rent is \$850.00 due on the 1st day of each month.

The landlord confirmed that rent has been paid in cash and that receipts have not been issued as the tenants did not request receipts. The tenants said the only receipt ever issued was at the start of the tenancy when the security deposit was paid.

The landlord provided a breakdown of rent owed since September 2013 as follows:

	Outstanding Monthly Balance
September 2013	300.00
October 2013	370.00
November 2013	25.00
December 2013	425.00
January 2014	850.00
February 2014	425.00
March 2014	0
April 2014	20.00
May 2014	300.00
June 2014	850.00
July 2014	850.00
TOTAL	4,415.00

The landlord claimed compensation for unpaid rent up to June 2014, inclusive; totaling \$3,565.00.

The landlord said that on February 1, 2014 he issued a 10 day Notice to end tenancy for \$1970.00 rent owed to that date. That sum aligns with the landlord's submission of rent owed to January 2014, inclusive.

The tenants disputed the Notice and at a hearing held on March 1, 2014 the parties reached a mutual agreement to attempt to solve the issues related to the tenancy.

On May 13, 2014 the landlord issued a 10 day Notice to end tenancy for unpaid rent, for \$1,865.00 rent owed. The tenants have disputed that Notice and agreement has now been reached that the tenancy will end.

The tenants dispute the claim made for unpaid rent. The tenants said that issues started last fall when they asked the landlord to make repairs to the unit. The landlord would not repair the heat. The tenants said that from January to March 2014 inclusive, the landlord received direct payment from a government Ministry, toward rent owed. Payments made were in the sum of \$425.00, with the balance of rent owed paid by cash.

The tenants said they repeatedly asked for receipts as they needed them for a business expense, but the landlord always refused to issue receipts. The tenants said the landlord kept records on the backs of envelopes.

The tenants said they had been on very friendly terms with the landlord and in the past the male tenant had worked for the landlord. That relationship has now deteriorated.

The landlord said that he received only 2 Ministry cheques on only 2 occasions.

Analysis – Unpaid Rent

The landlord has the burden of proving his claim, to a degree that is believable. I must be satisfied, in the absence of any documentary evidence and on the balance of probabilities that the landlord has established that rent, since September 2013, remains unpaid.

In the absence of any documentary evidence, my assessment and finding is based on the evidence supplied by each party; through oral testimony. I have considered the evidence given by each party and weighed the credibility and likelihood of each submission.

Just as the landlord could have provided evidence of rent payments by issuing rent receipts; the tenants could have submitted bank statements showing rent withdrawals or some other proof of payment, in response to the claim. The landlord has issued Notices to end the tenancy, based on unpaid rent, but they alone do not prove that rent was actually owed. On both occasions the tenants have disputed those Notices.

Section 26 of the Act requires a landlord to provide a tenant with a receipt for any rent payment made by cash. It is clear that the landlord breached the legislation when he failed to issue receipts; which would have provided a history of all rent payments and any balance that might be due to the landlord.

Therefore, in the absence of any record of payments made, which receipts would have created, I find that the landlord has failed to prove, on the balance of probabilities that the tenants failed to pay rent.

I found the tenant's submission that they had repeatedly requested receipts was believable and supported their submission that receipts would have shown rent was paid as due. By failing to provide receipts I find that the landlord evaded the creation of a record of payments made.

Therefore, I find that the claim for unpaid rent is dismissed.

Filing fees are declined.

Conclusion

The tenancy will end by mutual agreement effective July 31, 2014 at 1 p.m.

The landlord is entitled to an Order of possession.

The claim for unpaid rent is dismissed.

The balance of the tenants claim is dismissed with leave to reapply.

Filing fee are declined.

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 11, 2014

Residential Tenancy Branch

