



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: OPR, OPC, MNR, MNDC, FF
TENANT: CNC, CNR, RP, RR

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 loss or damaged under the Act, regulations or the tenancy agreement and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do repairs to the unit site or property and for a rent reduction.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on September 17, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on September 16, 2014 in accordance with section 89 of the Act.

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

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?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there repairs required to the unit?
3. Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy started on November 1, 2013 as a fixed term tenancy with an expiry date of April 30, 2014 and then continued on a month to month basis. The Landlord said a new rental agreement was written in August, 2014. Rent is \$550.00 per month payable in advance of the 1st day of each month. The Tenants did not pay a security deposit.

During the start of the hearing the Tenant said there is unpaid rent for the last 3 months of \$550.00 for each month. As well the tenant said she did not want to cause any trouble so she said she was willing to move out of the unit in the next few days. The Tenant continued to say that the male Tenant may have moved out of the unit already and she was having some issues with him.

The Landlord said that the Tenants did not pay rent of \$550.00 for the month of September, 2014, when it was due and as a result, on September 10, 2014, he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 10, 2014 to the Tenants at the rental unit. Further the Landlord said the Tenants have not paid the rent for October and November, 2014 in the amount of \$550.00 for each month. The Landlord said he wants to end the tenancy as soon as possible and collect the unpaid rent of \$1,650.00. The Landlord also requested an Order of Possession for as soon as possible.

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 \$1,650.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$1,700.00.

The Tenants said she agreed that they have \$1,650.00 in unpaid rent and she will try to move out as soon as she can.

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. Consequently, I dismiss the Tenants application as they agree they have unpaid rent. As well the Tenant said they are

moving out of the rental unit so their application for repairs and a rent reduction are no longer issues.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$1,650.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,650.00.

As well since the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of \$50.00 for this proceeding from the Tenants. A Monetary Order in the amount of \$1,700.00 is awarded to the Landlord.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. The Tenants have not paid the unpaid rent and their application to cancel the Notice to End Tenancy has been unsuccessful therefore: under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Consequently, I find pursuant to s. 55(2)(b) 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.

Conclusion

An Order of Possession effective two days after service of the Order and a Monetary Order in the amount of \$1,700.00 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: November 03, 2014

Residential Tenancy Branch

