



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORDS: MNR, OPR, FF
TENANT: CNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenant were done by posting the documents on the door of the rental unit on October 24, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on October 21, 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. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on March 1, 2014 as a fixed term tenancy with an expiry date of March 1, 2015. The copy of the tenancy agreement submitted as evidence was not signed by the Tenant; therefore the tenancy is considered a verbal month to month tenancy agreement. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 and a pet deposit of \$800.00 on March 1, 2014.

The Landlord said that the Tenant did not pay rent of \$300.00 for the month of August, 2014 and \$1,600.00 of unpaid rent for each month of September, October, 2014, when it was due and as a result, on October 12, 2014, the Landlords' agent personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2014 to an adult residing in the rental unit. The Landlord continued to say the Tenant has unpaid rent of \$1,600.00 for each month of November and December, 2014 as well. The Landlords requested an Order of Possession for as soon as possible if their application is successful.

The Landlord also said he is seeking to recover the \$100.00 filing fee for this proceeding. The Landlord said his total claim is for \$6,700.00 in unpaid rent and the \$100.00 filing fee for a total claim of \$6,800.00.

The Tenant said the amount of unpaid rent is correct. Further the Tenant said he had a roommate that moved out of the rental unit in May, 2014 and he was not able to afford the full rent by himself. The Tenant also said that his mother is an occupant of the rental unit. The Tenant questioned why the Landlord did not name the other tenant in the Landlords' application.

There was much discussion of the events that took place during this tenancy and the potential for additional applications for monetary claims by both parties, but these applications were focused on unpaid rent and a request for an order of possession. The parties were told to focus on the applications at hand.

The Tenant said in closing that the rent of \$6,700.00 is unpaid but he felt the treatment the Landlord gave him justified his actions and his application for dispute resolution.

The Landlord said in closing that he just wants to end the tenancy take care of the rental unit and move on with his life.

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 Tenant and the Occupant have not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the Notice to End Tenancy is dismissed without leave to reapply. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent.

I find pursuant to s. 55 of the Act that the Landlords are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant and occupant.

I also find that the Landlords are entitled to recover unpaid rent in the amount of \$6,700.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security and pet deposits in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 6,700.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$6,800.00
Less:	Security Deposit	\$ 800.00
	Pet Deposit	\$ 800.00
	Subtotal:	\$1,600.00
	Balance Owing	\$5,200.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,200.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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 Tenant's 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: December 01, 2014

Residential Tenancy Branch

