



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: RP, ERP, CNR, OLC, RR, PSF, MNDC, LAT, LRE
For the landlord: MNSD, OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, for an order requiring the landlord to comply with the Act, an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order allowing a reduction in rent, an order requiring the landlord to provide services or facilities required by law, an order authorizing the tenant to change the locks to the rental unit, and an order suspending or setting conditions on the landlord’s right to enter the rental unit.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants’ security deposit, and for recovery of the filing fee paid for this application.

The tenants and the landlord attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portions of the tenants' application dealing with a request for orders for the landlord, orders under the Act, and monetary compensation are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dealt only with the tenants' application to cancel 10 Day Notices and the landlord's application seeking an order of possession for the rental unit and a monetary order.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement shows that this tenancy began on November 1, 2013, monthly rent is \$800, payable by the first day of the month, and that the tenants paid a security deposit of \$400 on October 20, 2013.

The tenants stated that monthly rent was reduced by the landlord to \$700 in September 2014 and that the parties agreed that monthly rent could be paid on the first Friday of the month.

The landlord denied that monthly rent was reduced at all and that the rent was due and payable by the first day of the month, as indicated in the written tenancy agreement.

The written tenancy agreement also shows that rent was to be remitted by postdated cheques in increments of a minimum of 6 months.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord submitted that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 29, 2014, listed unpaid rent of \$800 due on December 1, 2014, and another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2015, listing total unpaid rent of \$1600, due as of January 1, 2015, by attaching it to the tenants' door.

The landlord asserted that since the issuance of the Notices, he has not received any rent payments from the tenants and is requesting an order of possession for the rental unit and a monetary order for unpaid rent.

Tenants' response-

The tenants submitted that they gave the landlord 12 postdated rent cheques in April 2014, but that when the rent was reduced to \$700 in September 2014, they began making rent payments in cash and were informed that the landlord had ripped up the remaining rent cheques.

The tenants submitted that they paid rent of \$700 in cash for September, October, and November 2014, but did not receive a receipt.

The tenants submitted further that they had the cash monthly rent payment for December ready, that the female tenant is always at home, as their child in home schooled, but the landlord did not attend the rental unit to collect the rent in December. The tenants submitted further that on January 2, 2015, the male tenant had ready \$1400 in cash for the December and January rent, the landlord then ripped the cash out of his hand, and drove off, without leaving a receipt. The tenants submitted that the police were called and a report was made, but confirmed not providing a copy of any police records relating to this alleged event.

The tenants are seeking cancellation of the Notices as they have paid the rent, in cash, as noted above.

Landlord's rebuttal-

The landlord denied ripping any money away from the tenant and reaffirmed that he has not been paid any rent for December and January.

The landlord submitted further that the tenants did pay rent in cash for September, October, and November, in the amount of \$800 each, but that he still preferred payments by cheque.

The landlord submitted further that the male tenant spoke to him in December and said he lost his job, and promised to pay the rent by December 20th. When he did not receive the rent by that date, he attended the rental unit, but that the tenant would not answer the door, although he knew they were home, according to the landlord. The

landlord confirmed that he did attempt to collect the rent by the postdated cheques he had in possession as he was not being paid, but that both cheques bounced.

The landlord said through many attempts to collect the rent, the tenants would not pay and denied having the police called.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notices within business five days; however, when a Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenants owed the landlord rent when the Notices were issued and that they did not pay all of the rent owed to the landlord within five days of receiving the Notices.

In reaching this conclusion, I relied upon the absence of any proof by the tenants that they had available the cash payment, such as through bank records showing a withdrawal or possible employment records showing wage payments. I also relied upon the tenants' failure to produce a police report supporting their version of events regarding the landlord's alleged taking the cash from the tenant, stating in the hearing they did not know that it was necessary. Due to this, I find the tenants submitted insufficient evidence that they paid any rent for Decision 2014 or January 2015.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants. The order of possession is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit

pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the landlord's monetary claim, I relied upon the signed, written tenancy agreement showing that monthly rent was \$800, and I do not accept the tenants' unconfirmed and disputed testimony that the monthly rent had been reduced to \$700.

I find landlord submitted sufficient evidence that the tenants owe the amount of \$1600 for unpaid rent through January 2015, or \$800 each for December 2014 and January 2015.

I therefore find that the landlord is entitled to a monetary award in the amount of \$1650, comprised of outstanding rent of \$1600 through January 2015, and the \$50 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$400 in partial satisfaction of his monetary award of \$1650 and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1250, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Tenants' application:

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notices is dismissed without leave to reapply as I find the 10 Day Notices to End Tenancy issued by the landlord have been supported by the landlord and are therefore valid and enforceable.

I also dismiss the portions of the tenants' application seeking an order requiring the landlord to comply with the Act, other orders for the landlord, and other orders under the Act are dismissed without leave to reapply as I have granted the landlord an order of possession for the rental unit and therefore the tenancy is ending.

I dismiss the tenants' monetary claim of approximately \$1600, with leave to reapply, as that issue was severed from the tenants' application and not dealt with at the hearing.

Conclusion

The landlord's application has been granted.

The portions of the tenants' application seeking cancellation of the landlord's 10 day Notices, orders for the landlord's compliance, other orders for the landlord, and other orders under the Act are dismissed without leave to reapply is dismissed.

The portion of the tenants' application for monetary compensation is dismissed, with 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: January 25, 2015

Residential Tenancy Branch

