



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KARIN FISHER & KEVIN KOHLEN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, FF
TENANT: CNR, CNC

Introduction

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

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

The Tenants filed to obtain an order to cancel the Notices to End Tenancy.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on April 8, 2015 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on April 7, 2015 in accordance with section 89 of the Act.

The conference call continued with both parties present.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
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?
4. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to an Order to cancel the Notices to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2012 as a three month tenancy and then continued on as a month to month basis. The Landlord said the Tenants paid a security deposit of \$392.50.

The Landlord said that the Tenant did not pay \$827.00 of rent for April, 2015 and the Tenants have not paid the May, 2015 rent of \$827.00 as well. The Landlord said they personally delivered a 10 Day Notice to End Tenancy for unpaid rent to the female Tenant on April 2, 2015. The Landlord said they have not received any rent payment since delivering the Notice to End Tenancy on April 2, 2012. The Landlord continued to say they are requesting an Order of Possession for as soon as possible if their application is successful.

The Tenant said they have not paid rent for April and May, 2015 as they had received a 1 Month Notice to End Tenancy for Cause on March 17, 2015 and they had filed a dispute application. The Tenant said they believed they could withhold rent until the arbitration hearing was held. The Tenant said he did not have an order from the Residential Tenancy Branch to withhold the rent they just thought they could. The Tenant agreed that the rent for April and May, 2015 in the total amount of \$1,654.00 is unpaid.

The Landlord closed her remarks by saying they have applied for the unpaid rent the Tenants owes and an Order of Possession for as soon as possible because they do not want to continue this tenancy.

The Tenant said in closing that they are making arrangements to move out of 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. Consequently, I find the Tenants have no grounds to dispute the Landlord's application as they agree they have unpaid rent. I dismiss the Tenants application without leave to reapply.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$827.00 for April 2015 and \$827.00 for May, 2015 totally \$1,654.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,654.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,654.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,704.00
Less:	Security Deposit	\$ 392.50	
	Subtotal:		\$ 392.50
	Balance Owing		\$1,311.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,311.50 have been issued to the Landlords. 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: May 11, 2015

Residential Tenancy Branch

