



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VIJAY SINGLA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant CNR
 Landlord OPR, MNR, MNSD, FF

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, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on January 20, 2016 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 January 18, 2016 in accordance with section 89 of the Act.

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

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
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?
4. Is the Landlord entitled to retain the Tenants' security deposit?

Tenants:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on February 15, 2013 as a one year fixed term tenancy and then continued on a month to month basis. Rent is \$1,180.00 per month payable on the first day of each month. The Tenants said they paid a security deposit of \$550.00 on February 15, 2013. A move in condition inspection report was completed and signed on March 1, 2013.

The Landlord said that the Tenant did not pay \$1,180.00 of rent for January, 2016 when it was due so she posted a 10 day Notice to End Tenancy for unpaid rent on the door of the Tenants' rental unit on January 2, 2016. The Landlord said the Tenant paid the rent late on January 15, 2016 and she issued a receipt that said "for occupancy only". The Landlord said she did not re-instate the tenancy by accepting the Tenant's payment for the unpaid rent. The Landlord continued to say the Tenant paid the February, 2016 rent late after another 10 Day Notice to End Tenancy for unpaid rent was issued to the Tenant. The Landlord said the Tenant has paid the rent late on many occasion and she has had enough and wants to end the tenancy.

The Tenant said he thought that he had made a mutual agreement with the Landlord to pay the January, 2016 rent on January 15, 2016 and this was the reason why he filed his application to dispute the 10 Day Notice to End Tenancy for unpaid rent late. The Tenant said the written agreement is included in the evidence. The hand written note says the Tenant will pay the rent and the Landlord's filing fee of \$50.00 by January 15, 2016. The written note does not say the tenancy is re-instated.

The Landlord said the tenancy was not re-instated and this is evident by the rent receipt dated January 15, 2016 for \$505.00 which says "for occupancy only".

The Tenant said in closing that he has had difficult financial times and he has tried to make arrangements to pay the rent, but he has been late on a number of occasions. The Tenant asked if the tenancy could continue and if not could he have until the end of March, 2016 to move out.

The Landlord's Counsel said in closing the Tenant has filed his dispute application late and he paid the rent late in January and February, 2016; therefore the Landlord is justified in ending the tenancy. The Landlord said they are requesting to end the tenancy March 15, 2016.

Analysis

As the Tenant does not dispute the Landlord's claim that the rent has been paid late on a number of occasions including January, 2016 with the payment on January 15, 2016 and February, 2016 with the payment on February 12, 2016; I find the Tenants have not established grounds to be successful in their request to cancel the 10 Day Notices to

End Tenancy for unpaid rent dated January 2, 2016 and February 2, 2016.
Consequently, I dismiss the Tenants' application without leave to reapply.

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 rent in full on time and the Tenants do not have the right to withhold a part or all of the rent. As well I find the mutual agreement between the Tenant and the Landlord dated January 8, 2016 agreed to a late rent payment but did not re-instate the tenancy which is shown by the receipt indicating the payment was for occupancy only. Consequently, I find the Tenants have not established grounds to dispute the Landlord's application as they agree they have not paid the rent in full and on time.

I accept the Landlords' testimony and evidence that the rent was paid late and this is grounds to end the tenancy. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect March 15, 2016 at 1:00 p.m.

Further I find that as the Landlord has agreed to end the tenancy on March 15, 2016 the Tenant is responsible for the March, 2016 rent up to March 15, 2016. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent for March, 2016 in the amount of \$1,180.00/31days x 15 days in March, 2016 for a total of \$570.97.

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

	March, 2016 rent:	\$570.97	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$620.97
Less:	Security Deposit	\$550.00	
	Subtotal:		\$550.00
	Balance Owing		\$ 70.97

Conclusion

An Order of Possession effective March 15, 2016 and a Monetary Order in the amount of \$70.97 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: March 01, 2016

Residential Tenancy Branch