



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlords' Application: OPR, MNR, MNSD, MNDC, FF
Tenants' Application: CNR, ERP, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants. The Landlords also filed an Application for Dispute Resolution and both applications were scheduled to be heard together in this hearing.

The Tenants filed their application on December 16, 2016 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), and for the Landlord to make emergency and non-emergency repairs to the rental suite.

The Landlords filed their application on December 22, 2016 for an Order of Possession and a Monetary Order for: unpaid rent; to keep the Tenants' security deposit; for monetary compensation under the *Residential Tenancy Act* (the "Act"), regulation and/or tenancy agreement; and to recover the filing fee from the Tenants.

Preliminary Issues

The female Tenant and an agent for the Landlords appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' application and their small amount of documentary evidence by registered mail prior to the hearing.

However, the Landlord's agent denied receipt of the Tenants' application. The Tenant testified that she had served this to the Landlords by registered mail on December 22, 2016 which is when the Residential Tenancy Branch provided the Tenants with a copy of their application for service on the Landlords. However, the Tenant was unable to provide any supporting evidence, such as the Canada Post tracking number, to show that their Application had been served to the Landlords by registered mail. The Tenant was allowed an opportunity to locate that evidence during the hearing but none was provided.

As the Tenants have failed to satisfy me that they served the Landlords with their application for this hearing pursuant to Section 89(1) (c) of the Act, I dismissed the Tenants' Application without leave to re-apply. The hearing continued to determine the Landlords' application as follows.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession to end the tenancy?
- Are the Landlords entitled to a Monetary Order for December 2016 and January 2017 rent?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of their monetary claim of \$2,900.00?

Background and Evidence

The parties agreed that this tenancy started on October 1, 2016 on a month to month basis. The parties signed a tenancy agreement which was provided into evidence and requires the Tenants to pay rent in the amount of \$1,450.00 on the first day of each month. The Tenants paid a security deposit of \$725.00 at the start of the tenancy which the Landlords still retain.

The Landlords' agent testified that the Tenants failed to pay rent for December 2016. Therefore, the Tenants were served with the 10 Day Notice on December 8, 2016 which was posted to the Tenants' door. The 10 Day Notice was provided into evidence and shows a vacancy date of December 18, 2016 due to \$1,450.00 payable on December 1, 2016. The Landlords' agent testified that the Landlords have not accepted rent for January 2017 from the Tenants as they do not wish to re-instate the tenancy. As a result, the Landlords claim \$2,900.00 in unpaid rent and an order to end the tenancy.

The Tenant confirmed receipt of the 10 Day Notice several days after it was posted to the door but was unable to recall the exact date. The Tenant also confirmed that that they had not paid rent for December 2016 and that the Landlord had failed to cash their January 2017 posted dated cheque.

The Tenant testified that they had not paid rent for December 2016 because the Landlord had failed to deal with a huge flood problem in the rental suite which was leading to mold. The Tenant continued to testify that the Landlord has failed to do roof

repairs and they are not being provided with proper heating. The Tenant testified that they discussed this issue with their Landlord at the start of December 2016 and the Landlord agreed to have a meeting with them but failed to appear for that meeting; instead the Landlord referred the Tenants to the company Landlord to deal with their issues.

The Landlords' agent denied that there was any agreement for the Landlord to allow the Tenants to withhold rent for December 2016 and that there was no evidence before me or the Landlords that the repairs the Tenants allege are emergency repairs. The Tenant indicated that they were going to be vacating the rental unit prior to the ending of January 2017 but was unable to commit to paying the rental arrears. As a result, the Landlord's agent requested an immediate Order of Possession.

Analysis

Having examined the copy of the 10 Day Notice, I find the contents on the approved form complied with the requirements of Section 52 of the Act. The Landlords posted the 10 Day Notice on the Tenants' door on December 8, 2016 but the Tenant was unable to recall the exact date they retrieved it from their door. Therefore, pursuant to Section 90(c) of the Act, I find the Tenants are deemed to have received the 10 Day Notice on December 11, 2016. Accordingly, pursuant to Section 53 of the Act, the vacancy date on the notice is corrected to December 21, 2016.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** a landlord complies with the Act unless the tenant has authority under the Act to withhold or deduct rent. This section of the Act specifically prohibits a tenant from withholding rent as a means to force a landlord to make repairs or when the landlord is alleged to be not in compliance with the Act. The Act provides alternative remedies where a landlord is not complying with the Act and if a tenant withholds rent contrary to the Act, they put their tenancy at risk of ending.

However, a tenant is able to withhold rent for very specific purposes stipulated by the Act. One of the reasons where a tenant may withhold rent or make deductions from rent relates to emergency repairs. In this respect, the Act lays out very specific conditions as to when and how a tenant may make deductions in such a situation. Section 33 of the Act states that if the landlord fails to make emergency repairs after being properly notified of them, the tenant may have the emergency repairs made and provide the landlord with receipts for those repairs for re-imbursement. If the landlord fails to reimburse the tenant with the costs incurred by the tenant, the tenant may then make that deduction from rent. Section 33 of the Act does not serve to give a tenant blanket

authority to withhold rent as a means to force the landlord to make emergency or non-emergency repairs.

In this case, I find the Tenants have failed to provide sufficient evidence to show that emergency repairs exist at the rental suite, or that the Tenants complied with the process outlined in the Act to allow them to withhold all rent for December 2016. I find that the Tenants have failed to comply with the Act in paying their rent for December 2016 and therefore the 10 Day Notice is valid.

Accordingly, I grant the Landlords' application for an Order of Possession to end the tenancy. As the effective vacancy date of the 10 Day Notice has now passed and the Tenants are in rental arrears, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenants. This order must be served on the Tenants and may then be enforced in the Supreme Court of British Columbia as an order of that court.

I also accept the Landlords did not cash the Tenants' rent cheque for January 2017 as the 10 Day Notice had been issued and the Landlords did not want to re-instate the tenancy. Therefore, I grant the Landlords' monetary claim for unpaid rent in the amount of \$2,900.00. As the Landlords have been successful in their application, the Landlords are also entitled to recover from the Tenants the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlords are granted a total award of \$3,000.00.

As the Landlords already hold \$725.00 in the Tenants' security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlords are issued with a Monetary Order for the remaining balance of \$2,275.00.

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if payment is not made in accordance with the Landlords' written instructions. Copies of the above orders are attached to the Landlords' copy of this Decision.

Conclusion

The Tenants have breached the Act by not paying rent. The Landlords are granted a two day Order of Possession to end the tenancy. The Landlords can keep the Tenants' security deposit and are issued a Monetary Order for the remaining balance of unpaid rent and the filing fee of \$2,275.00.

The Tenants' application is dismissed without leave to re-apply as the Tenants failed to serve the Landlords with their application and disclose any authority to withhold rent under the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: January 16, 2017

Residential Tenancy Branch