



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: CNR RR

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain the tenants’ security deposit, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2017 (the “10 Day Notice”) and for a rent reduction.

The landlord and the tenants attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties confirmed at the start of the hearing that they received the documentary evidence packages from each other and had the chance to review that evidence prior to the hearing.

Preliminary and Procedural Matter

The landlord testified that in addition to the rent owed as claimed that totals \$5,796.36, the tenants have subsequently not paid the rent for April 2017. As a result, the landlord requested to amend her application to include loss of rent for April 2017 of \$885.00. The

parties also confirmed that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent or money for use and occupancy is due pursuant to the tenancy agreement. Therefore, I amend the application to \$6,681.56 in unpaid rent, loss of rent and unpaid utilities. I note that the 36 cents should have read 56 cents, a difference of 20 cents, due to a minor adding error on the part of the landlord which I have corrected.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is continuing, are the tenants entitled to a rent reduction?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2000 and monthly rent in the amount of \$885.00 is due on the first day of each month and has not been increased during the tenancy. The parties confirmed that the tenants paid a \$442.50 security deposit at the start of the tenancy which the landlord continues to hold. That security deposit has accrued \$34.97 in interest for a total security deposit including interest of \$477.47.

The landlord's monetary claim of \$6,681.56 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. September 2015 unpaid portion of rent	\$235.00
2. October 2015 unpaid rent	\$885.00
3. November 2015 unpaid rent	\$885.00
4. December 2015 unpaid rent	\$885.00
5. January 2016 unpaid rent	\$885.00
6. January 2017 unpaid rent	\$885.00
7. February 2017 unpaid rent	\$885.00
8. April 2017 loss of rent	\$885.00
9. Unpaid electrical utilities (overdue bill submitted)	\$251.56
TOTAL	\$6,681.56

During the hearing, the tenants agreed that rent had not been paid as claimed by the landlord but that they had an agreement not to pay with the landlord which the landlord

vehemently disputed. The tenants confirmed that they did not have any such agreement in writing and the landlord testified that she was only being nice to the tenants to give them time to get caught up with their unpaid rent but that they have failed to do so.

Regarding the 10 Day Notice, the tenants confirmed being served with the 10 Day Notice on March 13, 2017 and disputed the 10 Day Notice on the same day. The effective vacancy date listed on the 10 Day Notice is March 13, 2017. The tenants continues to occupy the rental unit.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, based on the tenants claiming they had a verbal agreement with the landlord to not pay rent which the landlord vehemently disputed, I find the tenants have provided insufficient evidence of such an agreement and find that such an agreement would be highly unlikely as the written tenancy agreement requires \$885.00 in rent to be paid on the first day of each month. In addition, the tenants confirmed that they had not paid the amounts as claimed by the landlord and I find the tenants have failed to prove that they had permission not to pay those amounts. Therefore, **I dismiss** the tenants' Application **without leave to reapply** in full due to insufficient evidence. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants as the tenants continue to occupy the rental unit without paying rent or

money for use and occupancy. I find the tenancy ended on March 23, 2017 as the effective vacancy date automatically corrects under section 53 of the *Act*.

Unpaid rent, loss of rent and unpaid utilities - Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the oral tenancy agreement which the parties agreed required that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$6,681.56** as claimed for unpaid rent, loss of rent and unpaid utilities. I note that the unpaid utility bill supports the landlords claim.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$6,781.56** comprised of \$6,681.56 owing for unpaid rent, loss of rent, unpaid utilities plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain the tenants' full security deposit of \$477.47 which includes interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$6,304.09**.

Conclusion

The tenant's application to cancel the 10 Day Notice and for a rent reduction is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$6,781.56 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$477.47 which includes interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$6,304.09. This order

must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 12, 2017

Residential Tenancy Branch