



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR ERP MNDC MNR RP

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for an Order of Possession for Unpaid Rent pursuant to section 55 by Direct Request (an ex parte application). The landlords' application was adjourned to a participatory hearing when the tenant applied for: a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order that the landlords make repairs (and/or emergency repairs) to the rental unit pursuant to section 33.

Both landlords attended the hearing as well as a representative/family member on behalf of both tenants. All parties were given a full opportunity to be heard, to present their testimony, and to make submissions. Both parties confirmed receipt of the other's applications and evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for Unpaid Rent?

Are the tenants entitled to a monetary order for compensation for damage or loss and/or an order that the landlords make repairs (and/or emergency repairs) to the rental unit?

Background and Evidence

This tenancy began on May 1, 2017 with a monthly rental amount of \$2300.00 payable on the first of each month. The landlords provided undisputed testimony that the tenants did not pay a security deposit at the outset of this tenancy. The landlords both testified that the tenants continue to reside in the rental unit but have not paid rent for any month of this tenancy. The landlords testified that the tenants provided a cheque for May 2017 rent and that both that cheque and the security deposit cheque were returned for insufficient funds. As of the date of this hearing (June 23, 2017), the landlords provided undisputed testimony that the tenants had not paid any rent for the month of June 2017.

The tenant's representative testified that the landlord changed the locks to the building and that the tenants had paid their full rent. A copy of a generic invoice was submitted as evidence by the tenants: on it was written the name of a locksmith company and an amount paid. In the location where the date would usually be written, one of the tenants' names was written in. An identical receipt was submitted with the same tenants' name on the receipt. The receipt was dated April 30, 2017 and listed payment of rent, "damage deposit", and "advanced deposit" for a total amount of \$4600.00.

The landlords applied for an Order of Possession on May 16, 2016 – 16 days after the outset of this tenancy. The landlords submitted as evidence a copy of the 10 Day Notice to End Tenancy issued to the tenants on May 5, 2017. The amount indicated as unpaid rent on the notice was \$2300.00 – the equivalent of one months' rent. The landlords submitted a copy of the tenants' original cheque in the amount of \$4600.00 provided to the landlords at the outset of the tenancy. The landlords submitted a copy of their bank statement showing a returned cheque in the amount of \$4600.00 on May 4, 2017.

The tenants also made an application with respect to this tenancy. The tenants did not apply to dispute the landlord's Notice to End Tenancy but the tenants did apply for a monetary award in the amount of \$649.00. The tenants' representative argued that the landlords should pay for the \$350.00 locksmith fee they paid to rekey their lock when the landlords locked them out of the residence. The tenants also sought to recover \$299.00 for dishwasher repairs. The tenants' representative testified that she believes the tenants went ahead with dishwasher repairs without first asking the landlords to make those repairs. The landlord testified that it was one of the tenants who locked themselves out of the rental unit.

Analysis

I accept the evidence and testimony of the landlords that the tenants failed to pay the May 2017 rent (the first month of their tenancy) within five days of receiving the 10 Day Notice to End Tenancy. The tenants did not make application to dispute the 10 Day Notice to End Tenancy and pursuant to section 46(4) of the *Act* the tenants did not make a dispute application within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 15, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

As stated, I accept the testimony of the landlords and find that the landlords were justified in issuing a 10 Day Notice to End Tenancy for Unpaid Rent. There was no evidence provided by the tenants' representative to prove that the tenants had paid the rent or since paid their rental arrears. The tenants' representative also did not provide any evidence or testimony to prove that the landlord had been advised of the broken dishwasher and either failed to act or failed to compensate the tenants after becoming aware of the need for dishwasher repair. Therefore, I dismiss the tenants' application for \$299.00 for dishwasher repair.

I also dismiss the tenants' application for recovery of a locksmith fee. I find that the receipt submitted does not have sufficient information to support and buttress the testimony of the tenants' representative with respect to this matter. The tenants' representative could not provide first hand testimony with respect to the claim that the landlord changed the locks on the doors. As the representative was limited in her ability to provide proof and the documentary proof was unsatisfactory, I also dismiss the tenants' application for a \$350.00 locksmith fee.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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: July 21, 2017

Residential Tenancy Branch