



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR PSF
 FFL MNRL-S OPR

Introduction

This hearing was convened by way of conference call concerning an applications made by the tenants and by the landlord. The tenants' application seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord provide services or facilities required by the tenancy agreement or the law. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. One of the tenants also attended and gave affirmed testimony, and represented the other tenant. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the parties agreed that the tenants have vacated the rental unit and the tenants' application is withdrawn, and the landlord's application for an Order of Possession is withdrawn. The parties also agreed that the landlord has returned the security deposit to the tenants in full, and the landlord's application for an order permitting the landlord to keep it is withdrawn.

Issues with respect to service of the landlord's application and evidentiary material were raised which are dealt with in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the tenants were served with the landlord's application for dispute resolution and evidentiary material in accordance with the *Residential Tenancy Act* and the Rules of Procedure?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 10, 2017 and was to expire on February 28, 2018 at which time the tenants were required to vacate the rental unit. The tenancy ended on January 31, 2018, although the landlord's agent is not certain what day in January the tenants actually vacated. Rent in the amount of \$1,600.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which was returned in full to the tenants, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided for this hearing.

On December 4, 2017 the landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated December 3, 2017 and contains an effective date of vacancy of December 14, 2017 for unpaid rent in the amount of \$1,600.00 that was due on December 1, 2017. The landlord's agent is not certain how rent was usually paid, however the tenants have not paid any rent since the notice was issued and are now in arrears of rent the sum of \$3,200.00 for December, 2017 and January, 2018. The tenants didn't pay rent for November, which was consented to by the landlord, which the landlord does not claim in this application.

The tenant testified that the rental home was advertised on Craigslist without a price, and the tenants were told it was a "tear-down."

The tenant noticed a gas smell right away after moving in so called a contractor and personnel from Fortis Gas attended the rental unit. The technician got the pilot light working in the hot water tank. The furnace was in operating order however the pipes caused the smell so fittings were tightened.

On November 1, 2017 the tenant paid the rent, then later went downstairs to close the window in the furnace room and noticed a gnarly smell. A Fortis Gas technician attended the rental unit right away and sent the tenant to Emergency right away due to carbon monoxide leaking and gas. It was terrifying. The doctor told the tenant that nothing could

be done except to breath oxygen. The Fortis Gas technician left a caution notice on the door of the rental unit, a copy of which has been provided for this hearing. It is dated November 1, 2017 and states:

DANGER – Notice of hazardous condition – conditions found – gas leak in piping, defective heat exchanger – CO reading furnace flue – gas 500 ppm/ gas leak before – HWT - do not use until repairs are made. Fortis BC strongly advises that you employ a licensed gas fitter to make the necessary repairs and re-inspect the appliance BEFORE placing it back in service.

The tenant looked for another place to rent, but the lease didn't expire till the end of February, 2018, however the tenants didn't agree to not having heat in the rental unit.

Around November 4, 2017 the landlord gave the tenant back the rent paid for November and the tenant understood they were not required to pay rent for December, but the tenant moved out at the end of November. The other tenant had belongings there but he hadn't resided there since about December 1 or so. The tenant told the landlord at the beginning of December that she was moving out, and all belongings were removed by January 8, 2018. The landlord started to tear the house down on January 22, 2018.

The tenant testified that neither tenant was served with the landlord's evidentiary material or the landlord's application. The landlord returned the security deposit in full to the tenants so there was no reason to provide the landlord with a forwarding address.

The landlord's agent testified that the tenants were individually served by Registered Mail at the address of the rental unit on January 15, 2018, and copies of Registered Domestic Customer Receipts stamped with that date by Canada Post have been provided for this hearing. The landlord's agent testified that neither of the packages was claimed by the tenants and both were returned to the landlord.

Analysis

The *Residential Tenancy Act* and Rules of Procedure govern residential tenancy disputes, which require a party who makes a monetary claim against another party to serve each party that may be affected by an order within 3 days of making the application. Therefore, the applicant must know where to serve the respondent(s). It does not suffice to serve respondents at a place they no longer reside in, and in the case of a landlord serving a tenant, it does not suffice to serve documents at the rental unit if the landlord is aware that the tenants don't reside there.

In this case, the parties agree that the tenants didn't receive any of the documents however the landlord has provided evidence of having served each of the tenants individually by registered mail on January 15, 2018, both at the address of the rental unit. The tenant testified that the landlord had returned the security deposit to the tenants so there was no reason to provide a forwarding address to the landlord. The tenant also testified that neither of the tenants was able to stay at the rental unit beyond the first of December, 2017 and the landlord was made aware of that. That was not disputed by the landlord's agent. The tenants' belongings remained in the rental unit, meaning that the tenants were still occupying it, but the parties agree that the landlord returned the rent paid for November, and the tenant understood that rent for December was not required. I am satisfied that the landlord did so because the rental unit was not inhabitable, and the landlord could not have re-rented.

In the circumstances, I am satisfied that the landlord knew the tenants were not residing in the rental unit prior to serving the Landlord's Application for Dispute Resolution. I am also satisfied, given that the landlord returned rent paid for November, 2017 that the landlord intended to demolish the rental unit, and did not expect to receive rent for December or January knowing the home was not inhabitable. I am not satisfied that the landlord has established that the tenants ought to have paid rent or knew they were required to do so. Given that the landlord returned the security deposit in full to the tenants, I find that the landlord's intent was and is in question, and I am not satisfied that the landlord is entitled under the *Act* to collect rent.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent is hereby dismissed.

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: February 13, 2018

Residential Tenancy Branch