



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNCARE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPR, OPC, MNR, MNDC, MND, FF
TENANT: CNC, ERP, OLC,

Introduction

This matter dealt with an application by both the Landlord and the Tenants.

The Landlord has applied to end the tenancy and for an Order of Possession, for compensation for unpaid rent, for compensation loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit site or property and to recover the filing fee.

The Tenants have applied to cancel the 1 Month Notice to End Tenancy for Cause, for emergency repairs to the unit site or property and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 14, 2018 as required by s. 89 of the Act.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 7, 2018 as required by section 89 of the Act.

Both parties said they received the others hearing packages.

Issues(s) to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Is there unpaid rent?
3. Is there a loss or damage to the Landlord and if so is the Landlord entitled to compensation?
4. Is there damage to the property and is the Landlord entitled to compensation?

Tenant:

1. Is the Tenant entitled to an order cancelling the Notice to End Tenancy for Cause?
2. Are there emergency repairs to be completed?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on November 1, 2017 as a one year fixed term tenancy with an expiry date of December 30, 2018. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00 at the start of the tenancy. A condition inspection report was completed on November 5, 2017.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated March 30, 2018 by posting it on the Tenants' door on March 31, 2018. The Landlord continued to say the Tenant has breached cause 1 if the addendum to the tenancy agreement which says no loud music and noise and tenants are not to disturb other tenants. The Landlord said she has had a number of complaints about the Tenants making noise and playing loud music. Further the Landlord said the male Tenant got into a fight with the tenant in unit #6 and the Police were called. The Landlord said the tenant in unit # 6 said it was unsafe to live in the rental complex and he moved out. The Landlord continued to say the Tenants did not clean up their dog's feces on the grounds and the Landlord had to pay \$45.00 to get the feces removed from the grounds. The Landlord said she is claiming this \$45.00 for damages and she included a receipt for the expenses. In addition the Landlord said the Tenants are growing marijuana illegally in the rental unit. In addition the Landlord submitted a photograph of marijuana plants on a window ledge which the Landlord said was in the Tenants' unit. The Landlord said this is an illegal activity and should be grounds to end the tenancy.

Further the Landlord said she issued a 10 Day Notice to End Tenancy for unpaid rent dated April 3, 2018 and had her maintenance person post the Notice on the door of the Tenants rental unit on April 4, 2018. The Landlord submitted a photograph of the Notice on the Tenants' door. The Notice to End Tenancy has an effective vacancy date of April 13, 2018. The Landlord continued to say she issued the Notice to End Tenancy because the Tenant has unpaid rent for April 2018 and now the Tenant has not paid the May or June 2018 rents of \$1,000.00 each. The Landlord said the Tenants have unpaid rent in a total amount of \$3,000.00.

The Tenant agreed that they have not paid the rent for May and June 2018 but the Tenant thought the April 2018 rent was paid by using the security and pet deposits. The Tenant said the Landlord said she was not going to return the deposits so the Tenant believed the Landlord would use the deposits for the April 2018 rent.

Further the Tenants said they were the ones who called the Police and no charges were filed. The Tenant continued to say the tenant in unit 6 started the fight and was moving out of the rental complex before the fight happened. The Tenant said this is not grounds to end the tenancy.

The Tenant continued to say that they do not grow marijuana in their unit and the photograph the Landlord submitted could be any where.

Further the Tenant said they do not walk their dog on the grounds and it was not their dog's feces that the Landlord paid to have cleaned up. The Tenant said that the Landlord's claim about marijuana and the dog feces are not proven and therefore are not grounds to end a tenancy.

With regard to the 10 Day Notice to End Tenancy for unpaid rent the Tenant said they did not receive it. As a result they did not know the Landlord had issued it and therefore they did not dispute it. The Tenant said that because they did not receive the 10 Day Notice to End Tenancy for Unpaid Rent it is not a valid reason to end the tenancy.

The Tenants said in closing they have unpaid rent but they did not pay the rent because the Landlord has not repaired the tiles in the bathroom and they believe there is mold issues developing in the bathroom. The Tenant said they are disputing the 1 Month Notice to End Tenancy for Cause because the Landlord's claims are wrong.

The Landlord said she does not want to continue the tenancy and the Landlord requested and order for unpaid rent of \$3,000.00, \$45.00 for feces clean up and to recover the \$100.00 filing fee.

Analysis

I have carefully reviewed the testimony and evidence submitted by both the Landlord and the Tenants. In this review it is only necessary for a Landlord to prove one Notice to End Tenancy to be successful in ending a tenancy. I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated April 3, 2018 and I accept the Notice and I accept the Landlord's testimony and photograph evidence that the Notice was serviced to the Tenants by the Landlord's maintenance worker on April 4, 2018.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenants are deemed to have received the 10 Day Notice to End Tenancy for Unpaid Rent three days after the Notice was posted on the Tenants' door, or on April 7, 2018. Consequently, the Tenants would have had to apply to dispute the Notice or amend their application dated April 4, 2018 by April 12, 2018.

I find that the Tenant did not applied to dispute the 10 Day Notice to End Tenancy for Unpaid Rent dated April 3, 2018 and the Tenants have unpaid rent for April, May and June, 2018 in the amount of \$3,000.00. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

Further, section 26 (1) 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 the right under this Act to deduct all or a portion of the rent.

I find the Tenant does not have the right to withhold the rent payments therefore I find for the Landlord and I order the Landlord to recover the unpaid rent in the amount of \$3,000.00 from the Tenants.

I further find that the Landlord's evidence is not conclusive that the Tenants' dog is the only dog that left feces on the grounds; therefore I dismiss the Landlord's claim for \$45.00 to clean up the dog feces on the grounds. .

As the Landlord has partially successful in this matter, she is also entitled to recover from the Tenants the \$100.00 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 and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 3,000.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$ 3,100.00
Less:	Security Deposit	\$ 500.00	
	Pet Deposit	\$ 500.00	
	Subtotal:		\$ 1,000.00
	Balance Owing		\$ 2,100.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$2,100.00 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.

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: June 11, 2018

Residential Tenancy Branch