



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, FF
TENANT: CNR, ERP, LAT, MNR, RP, RR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do emergency repairs and general repairs to the unit site or property, to restrict the Landlord's right of entry to the unit, for compensation from the Landlord and for a rent reduction.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on April 27, 2019 in accordance with section 89 of the Act.

The Landlord said she received the Tenants' documents by personal delivery on April 27, 2019.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there emergency repairs required to the unit?
3. Are there general repairs required to the unit?
4. Are the Tenants entitled to compensation?
5. Are the Tenants entitled to an order restricting the Landlord's right of entry?
6. Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy started on October 15, 2018 as a month to month tenancy. Rent is \$1,950.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$975.00 on October 3, 2018.

The Landlord said that the Tenants did not pay rent of \$200.00 for the month of February 2019 and \$1,950.00 for each month of March and April 2019, when it was due and as a result, on April 10, 2019, she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 10, 2019 to the Tenants at the rental unit. Further the Landlord said the Tenants have unpaid rent for May 2019 of \$1,950.00 as well. The Landlord said total unpaid rent is \$6,050.00.

The Landlord said she is requesting the tenancy to end and an Order of Possession for as soon as possible. As well the Landlord requested a monetary order for the unpaid rent.

The Landlord also said she is seeking to recover the \$100.00 filing fee for this proceeding and to retain the Tenants' security deposit as partial payment of the unpaid rent.

Analysis

As the Tenants did not attend the hearing.

Residential Tenancy Branch Rules of Procedure, section 10.1, provides:

10.1 Commencement of the dispute resolution proceeding

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of an appearance by the Tenants, the Tenants' application is abandoned and dismissed without leave to reapply.

Section 26 (1) of the Act says 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 a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I accept the Landlord's testimony and evidence that there is unpaid rent in the total amount of \$6,050.00.

Further, I find that the Tenants have not paid the overdue rent and have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 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.

As the Landlord has been 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 deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$6,050.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$6,150.00
Less:	Security Deposit	\$ 975.00	
	Subtotal:		\$ 975.00
	Balance Owing		\$ 5,175.00

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$5,175.00 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.

The Tenants' application is dismissed without leave to reapply.

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: May 28, 2019

Residential Tenancy Branch