



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNR, OPR, FF

Introduction:

This hearing was convened upon the applications of the tenants and the landlords.

The tenants seek:

1. To cancel a Notice to End Tenancy given for unpaid rent.

The landlords seek:

1. A monetary order for unpaid rent;
2. An Order of Possession;
3. Recovery of the filing fee paid for this application.

Background and Evidence

The parties were friends. In or about September 2008 the landlord decided to leave the rental unit to move with her husband and offered the home to the tenants as a “home sitting” arrangement while the home was listed for sale. The parties did not enter into a written agreement but the evidence of both is that the tenants would pay no rent during while house sitting arrangement but would be responsible for utility bills. The tenants moved into the home as “house sitters” approximately Thanksgiving 2008.

On or about November 10, 2008 the landlord advised the tenants that due to extenuating financial circumstances she could not continue the “house sitting” arrangement. The landlord testified that she advised the tenants that she would take the home off the market and advertise the property for rent as of January 1, 2009. The landlord offered the home as a rental unit to the tenants at the rate of \$750.00 per month commencing January 1, 2009. The landlord testified that if the tenants did wish to rent the unit she would also require a security deposit of half a month’s rent, \$375.00. Both parties testified that this arrangement was verbally agreed to. Although the tenant later testified that she agreed to it “partly” or “not entirely” or “not exactly” and the male tenant testified that they agreed to “nothing”. In any event, the facts as agreed by all parties is that the tenants did not vacate the rental unit.

The tenant testified that they later contacted the landlord and advised that due to other bills and the arrival of Christmas the tenants could not start paying rent until February 1, 2009. The landlord testified that she was unable to allow the tenants to stay on in January without paying rent so she advised the tenants that if they could not start paying rent as of January 1, 2009 they would have to vacate.

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The landlord testified that the tenants did not vacate and did not pay rent as of January 1, 2009. The landlord therefore issued a 10 day Notice to End Tenancy for unpaid rent. The tenants testified that they received the notice by registered mail on or about January 6, 2009. At the hearing the tenants testified that they did not pay the sum sought in the Notice and they have still not paid rent for January or February 2009. The tenants confirmed they had not vacated and both parties agree that the tenants have not paid the security deposit.

The landlord testified that she decided to re-list the property for sale and the realtor attempted to arrange showings but the tenants refused to allow the realtor into the rental unit. The landlord testified that the tenants told her she was harassing them and breaching their quiet enjoyment.

The tenants' dispute that there was ever a tenancy agreement between the parties and say it was a house sitting arrangement only. The tenant asked "Why would we give up our own home to move into her home to pay rent?"

Analysis and Findings

The tenant testified first that she agreed to start paying rent as of January 1, 2009 and later, during the course of the hearing she changed her story and testified that she agree to the arrangement "partly" or "not entirely" or "not exactly". The male tenant's testimony was that there was never an agreement to pay rent. While the tenants say that no tenancy was ever entered into the tenant later agreed that she called the landlord and asked the tenant to forgo the need for rent until February 1, 2008.

I find the tenants' testimony to be contradictory and I find the landlord's testimony to be consistent. I therefore accept the landlord's version of events and accept that while this may have begun as a home sitting arrangement the landlord's circumstances changed and a tenancy ensued. During the course of the tenancy the tenants did not pay rent and a Notice to End Tenancy was issued. The tenants admit they have not paid rent for January or February 2009. I therefore find that the landlord is entitled to a monetary award for \$1,500.00. In her application for dispute resolution the landlord claimed only \$1,125.00 but sought "\$1,125.00 plus the damage deposit". The damage deposit which should have been paid was \$375.00. As this tenancy is ending I cannot order that the tenant's pay a security deposit but I can and will order that they pay rent for both of January and February 2009 in the sum of \$1,500.00.

The landlord is given a formal monetary Order in the above terms. If the tenants do not pay the sum awarded forthwith the Order may be enforced as an Order of the Provincial Court of British Columbia, Small Claims Division.

Having found there are rental arrears I find the landlord is entitled to an Order of Possession effective 2 days after service upon the tenants. The landlord has been



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provided with a formal Order of Possession. If the tenants do not vacate as required, the Order may be enforced as an Order of the Supreme Court of British Columbia.

Having found in favour of the landlord I will also award the landlord the \$50.00 filing fee paid for this application.

The tenant's applications are dismissed.