



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlords: OPR, MNR, MNR, MNSD, MNDC, FF
Tenants: CNR, FF, O

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenants. The landlords have applied for an Order of Possession for unpaid rent; for a monetary order for unpaid rent, for damage to the unit, site or property, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlords for the cost of this application.

All parties attended, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing the tenants testified that they had not received the evidence provided to the Residential Tenancy Branch by the landlords. In determining whether or not that evidence was served in accordance with the *Residential Tenancy Act* and Residential Tenancy Branch Rules of Procedure, I have examined the applications filed by the parties. The application filed by the landlords shows that the address of the tenants is the same address as the dispute address and is also the same address of the rental unit contained in the Tenancy Agreement. In the application filed by the tenants, the tenants' address and dispute address are not the same address as provided by the landlord. The landlords have also provided proof that the evidence package was sent by registered mail on August 9, 2010 to the address of the rental unit contained in the

landlord's application and the Tenancy Agreement. The copy of the envelope sent also contains a Post Office Box number for the addressee, and shows that it was unclaimed. The tenants also testified that they still reside in the rental unit.

I find that the tenants have been served in accordance with the *Act* and Rules of Procedure.

All evidence provided by the parties has been reviewed and considered.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to an order permitting the landlords to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent?

Background and Evidence

The tenancy began on July 1, 2009, and the parties entered into a tenancy agreement on June 6, 2009 on a month-to-month basis. Rent in the amount of \$626.00 is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$313.00.

The undisputed testimony of the parties is that they had originally discussed a purchase agreement wherein the landlords would hold a mortgage with the tenants and the tenants would make monthly mortgage payments to the landlords. That agreement was never drawn up nor signed by the parties. The only agreement signed by the parties is

the Tenancy Agreement, a copy of which was provided by both parties in advance of the hearing.

The landlords testified that the tenants fell behind in rent, and on July 24, 2010 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. That notice has an expected vacancy date of August 3, 2010, and shows that the tenants had not paid rent on July 1 or July 1, 2010.

The landlords provided verbal evidence with respect to rental payments, and I have calculated the amounts due, paid, and balance due below:

Date	Amount Due	Amount Paid	Balance Due
January 1/10	\$626.00	0	\$626.00
January 20/10		\$460.00	\$166.00
February 1/10	\$626.00	0	\$792.00
March 1/10	\$626.00	0	\$1,418.00
March 3/10		\$185.00	\$1,233.00
March 14/10		\$436.00	\$797.00
April 1/10	\$626.00	0	\$1,423.00
April 9/10		\$260.00	\$1,163.00
May 1/10	\$626.00	0	\$1,789.00
May 3/10		\$520.00	\$1,269.00
May 22/10		\$700.00	\$569.00
June 1/10	\$626.00	0	\$1,195.00
June 28/10		\$300.00	\$895.00
July 1/10	\$626.00	0	\$1,521.00
August 1/10	\$626.00	0	\$2,147.00
August 26/10		\$626.00	\$1,521.00

In addition, the parties testified that the landlords were to reimburse the tenants the amount of \$50.00 per month for water. Those payments are not considered in the spreadsheet above. The tenants testified that they had not been reimbursed, however the landlords testified that the amount was recovered up to February, 2010. If that were the case, the \$1,521.00 outstanding as at the end of August, 2010 would be reduced to \$1,221.00, which is the amount of the landlords' claim for unpaid rent.

The landlords also lead evidence with respect to damage to the unit. I decline to make an order with respect to damages because the tenants still reside in the rental unit.

The tenants testified that their records show they are in arrears \$323.00 in addition to rent for the month of September which has not yet been paid. They also provided copies of receipts in advance of the hearing which agree with the payments contained in the spreadsheet above, with the exception of a payment in the amount of \$280.00 which is not included in the landlords' evidence.

Analysis

Based on the testimony and evidence of the parties, I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have admitted to being in arrears.

As for the monetary order, I find that the landlords have established a claim for \$1,517.00 in unpaid rent. The landlords are also entitled to recovery of the \$50.00 filing fee.

With respect to the landlords' application for damages, the landlords must give the tenants an opportunity to correct any damage situations that may have occurred during the tenancy, before the tenancy ends, and therefore I find that the application is premature.

With respect to the tenants' application to cancel the notice to end tenancy, I find that the landlords have proven that rent remains unpaid. The *Act* specifies that to

successfully dispute the notice to end tenancy, the tenants must be able to prove that the landlords' notice is incorrect and that any rental arrears are paid within 5 days of service of the notice. The tenants have failed to establish that all arrears have been paid within that 5 days, and therefore have not established that the notice to end tenancy should be cancelled.

Conclusion

Based on the above facts I find that the landlords are entitled to an Order of Possession. The tenants must be served with the Order of Possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlords' application for a monetary order for damages is hereby dismissed.

I order that the landlords retain the deposit and interest of \$313.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$1,254.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application to cancel the notice to end tenancy 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: September 20, 2010.

Dispute Resolution Officer