Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   Tenant   CNR
                     Landlord   OPR, MNDC, MNR, FF

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, compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on April 16, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on April 13, 2012, but the Landlord did not receive the Tenants Application and Hearing Package because the Tenant addressed the registered mail package incorrectly. Consequently I dismiss the Tenants' application with leave to reapply as service was not completed in accordance to Section 89 of the Act.

The conference call continued hearing only the Landlord's application.

Issues to be Decided

Landlord:
1. Is the Landlord entitled to end the tenancy?
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?

<u>Background and Evidence</u>

This tenancy started on November 5, 2011 as a month to month tenancy. Rent is $775.00 per month payable in advance of the 1st day of each month. The Landlord said the Tenants did not pay the security deposit of $387.50.

The Landlord said that the Tenant did not pay $775.00 of rent for April, 2012 and the Tenant has not paid the May, 2012 rent of $775.00 as well. The Landlord said they posted a 10 day Notice to End Tenancy for unpaid rent on the door of the Tenants' rental unit on April 2, 2012. The Landlord said they have not received any rent payment since posting the Notice to End Tenancy on April 2, 2012. The Landlord said they are requesting an Order of Possession for as soon as possible if their application is successful.

The Tenants said they went to Social Services in the first part of April to get assistance to pay the rent. The Tenant continued to say that Social Services called the Landlord and the Landlord said he would not accept the rent as he was ending the tenancy. The Landlord said he told social Services that he was ending the tenancy, but he did not say he would not accept the rent.

The Tenants agreed that the rent for April and May, 2012 in the total amount of $1,550.00 is unpaid and that they did not pay the security deposit of $387.50. The Tenant continued to say they believe Social Services would pay the rent if the Landlord agreed to it. The Tenant also said they do not have the resources to pay the rent at this time.

The Landlord closed his remarks by saying they have applied for the rent the Tenants owes them and an Order of Possession because they do not want to continue this tenancy.

The Tenant said in closing that they have tried to make arrangements to pay the rent, but it has not worked out for them.

Analysis

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 find the Tenants have no grounds to dispute the Landlord's application as they agree they have unpaid rent that they are not able to pay at the present time.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of $775.00 for April 2012 and $775.00 for May, 2012 totally $1,550.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of $1,550.00. As well since the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of $50.00 for this proceeding from the Tenants. A Monetary Order in the amount of $1,600.00 is awarded to the Landlord.

With Respect to the Landlord's application for payment of the Tenant's security deposit, I find it is the responsibility of the Landlord to collect the deposit at the start of the tenancy and if the Landlord does not collect a security deposit the Landlord is unable to collect it for unpaid rent or damages at the end of the tenancy. The Landlord is at liberty to make a new application for damages if there are damages to the unit after the tenancy has ended. The Landlord's application to have the Tenants pay a security deposit is dismissed without leave to reapply.

Further as the Tenants have not paid the overdue rent and has not been successful in their applied for dispute resolution. 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.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of $1,600.00 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 with 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*.

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Residential Tenancy Branch