



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, MNDC, OLC, ERP, RR, LRE, RR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ; the cost of emergency repairs and compensation for damage or loss under the Act totaling \$6,022.35; Orders that the landlord comply with the Act, make repairs and emergency repairs; that conditions be placed on the right of the landlord to enter the rental unit and that the tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The parties acknowledged receipt of service of Notice of applications made; the tenants received Notice of the landlord's application and the landlord received Notice of the tenant's application. Service of the Notices of hearing was completed within the required time-frame.

The parties agreed that both applications would be heard at the time scheduled for the tenant's application; the landlord's application was set to be heard on the same date, but a later time.

The landlord's application was amended to include a claim for unpaid September, 2012, rent in the sum of \$2,375.00.

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End

Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

The tenants said that their 21 pages of evidence and a CD were served to the landlord via regular mail, sent on September 3, 2012. The landlord's agent stated she checked with the landlord as recently as yesterday and that no evidence was received. In the absence of proof of service I determined that the tenant's evidence would be set aside. The tenants were at liberty to read from any of their documents so that the evidence could be considered via oral testimony.

The tenant's supplied a DVD as evidence; this was not considered as the tenants did not have any evidence that they had attempted to confirm the landlord had the ability to view that evidence at least 5 days prior to the hearing. This is a requirement of the Rules of Procedure.

The tenant's testified they did not receive 1 page of the landlord's evidence submission; that document was set aside and the landlord was at liberty to make oral submissions.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 16, 2012 be cancelled?

Is the landlord entitled to compensation for unpaid August and September, 2012, rent in the sum of \$4,750.00?

May the landlord retain the deposit in partial satisfaction of the claim?

Background and Evidence

This 1 year fixed-term tenancy commenced on July 1, 2012, rent is \$2,375.00 per month, due on the first day of each month. A deposit in the sum of \$1,175.00 was paid on June 5, 2012.

The tenants confirmed receipt of a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 16, 2012. The male tenant received the Notice, via personal delivery, on that date. The tenants said they only received the 1st page of the Notice and that on August 21, 2012, they did receive a copy of the 2nd page, sent to them via email. The tenants applied to cancel the Notice on August 28, 2012. The tenants argued that the failure of the landlord to serve the 2 pages of the Notice should render the Notice invalid.

The landlord stated that both pages of the Notice were given to the tenants on August 16, 2012, and that they did send the tenants a copy of the 2nd page, after they received a request to do so.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,375.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental unit by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants confirmed that they have not paid rent owed for August and September, 2012, as the landlord has failed to make necessary repairs to the unit. The tenants also expected to be able to rent out a basement suite, to assist them in paying rent, but have found that the suite is not fit to be occupied.

The tenants confirmed that they did not submit any invoices in support of emergency repairs that they have completed to the unit. The tenants said they had spent \$200.00 to replace carpets, after a flood had occurred and that this was the only invoice they possessed. The tenants confirmed that no other expenses have been paid for emergency repairs and that the email evidence that was set aside did not contain any evidence of agreement by the landlord that reductions could be made from rent owed.

During the hearing the female tenant stated she felt it was unfair that the evidence was set aside. The tenants were given repeated opportunities to reference their evidence and make any oral submission from that evidence.

Analysis

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As there is some dispute in relation to service of the 2nd page of the Notice I determined, pursuant to section 71(2) of the Act, that the tenants were sufficiently served with Notice to end tenancy, effective August 21, 2012; the date the tenants confirmed receipt of the 2nd page of the Notice.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 31, 2012.

I considered the tenant's application to dispute the Notice, even though it had been submitted outside of the time frame required by the Act. The tenants received the Notice no later than August 21, 2012 and the tenants understood they must either pay the rent or dispute the Notice within 5 days, as indicated on the 1st page of the Notice.

The application to dispute the Notice was made on the 7th day and the tenants failed to request more time to dispute the Notice. Therefore, as the tenants could not point to any extraordinary circumstances as to why the application was made late, section 46(5) of the Act determines that they accepted the tenancy should end.

The tenants provided no evidence of payment of emergency repairs and despite being given ample opportunity during the hearing, did not reference any of their excluded evidence which supported their submission that the landlord had provided permission for repairs and rent reductions to be made at the tenant's expense. The tenants confirmed that they did not have receipts to support emergency repairs, only that they had completed some labour themselves.

Section 26 of the Act provides:

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 a right under this Act to deduct all or a portion of the rent.

(Emphasis added)

The tenants did not pay rent when it was due; they did not possess any Order allowing rent reductions to be made and did not provide proof of any emergency repairs having been made, in accordance with the Act.

Therefore, I find that the landlord is entitled to compensation in the sum of \$4,750.00 for unpaid August and September, 2012, rent.

As the tenants did not dispute the Notice within 5 days of August 21, 2012 and, as the tenants failed to pay the rent due within 5 days of August 21, 2012, I find that the landlord is entitled to an Order of possession that is effective 2 days after it is served to the tenants.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,175.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$4,750.00, which is comprised of unpaid August and September, 2012, rent.

The landlord will be retaining the tenant's security deposit in the amount of \$1,175.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,575.00. In the event that the tenants do not comply with this Order, it may be served

on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The portion of the tenant's application to cancel the 10 Day Notice to End tenancy issued on August 16, 2012, is dismissed. The balance of the tenant's application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 01, 2012.

Residential Tenancy Branch