



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, MNDC, OLC, ERP, RP, PSF, O

Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent or utilities and the recovery of the filing fee. The Tenant has made an application for an order cancelling the notice to end tenancy for unpaid rent, for a monetary claim for money owed or compensation for damage or loss, an order to comply with the Act, an order for emergency repairs, an order for repairs and an order to provide services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package and evidence submitted, I am satisfied that both parties have been properly served

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (postage) are dismissed.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is Tenant entitled to an order cancelling the notice to end tenancy?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the Landlord to make emergency repairs for health or safety concerns, to make repairs to the unit, site or property and provide services or facilities required by law?

Background, Evidence and Analysis

Both parties agreed that this Tenancy began on January 1, 2013 with no signed tenancy agreement. The agreed upon rent was \$1,000.00 per month and a \$500.00 security deposit. Both parties agreed that the Landlord received \$200.00 in cash on January 1, 2013 and a later payment of \$500.00 in cash on January 11, 2013.

Both parties also agreed that the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent dated January 14, 2013. The notice states that the Tenant failed to pay rent of \$700.00 that was due on January 8, 2013. The note also displays an incomplete effective date for move-out.

The Landlord states that the Tenants have failed to make any payments since this notice was served upon them. The Tenants dispute this stating that they have made repeated attempts to pay the rent, but the Landlord's refused to accept payment. The Landlord disputes this. The Landlord has provided copies of email exchanges, witness letters and text messages between the two parties.

I find that I prefer the evidence of the Landlord over that of the Tenant. Although there are significant lapses by both parties regarding this tenancy, I find that the Tenants were properly served with a 10 day notice to end tenancy issued for unpaid rent. Neither parties dispute that the Tenants were in arrears of \$300.00 for January rent and as well the Tenants failed to pay an agreed upon \$500.00 security deposit. The Tenants argument that the Landlord refused rent, I find is not plausible. The Tenants were inconsistent and contradictory in their direct testimony. The Tenants also referred to not paying rent since the Landlord refused to issue receipts. This is made out in the Tenant's self written receipt that both parties have confirmed that the Landlord accepted the initial \$200.00 rent payment on January 1, 2013. As such, I find that the Landlords have established grounds for an order of possession. The Landlords are granted an order of possession. This order must be served on the Tenants. 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 Tenant's request to cancel a notice to end tenancy is dismissed. As the Tenancy is ending, the Tenant's request for an order for emergency repairs, an order for repairs and an order to provide services or facilities agreed upon but not provided are dismissed.

As for the monetary claims, I find based upon the undisputed testimony of the Tenant that the Landlord has established a claim for unpaid rent of \$1,300.00. This consists of \$300.00 for January and \$1,000.00 for February. The Landlord has also made application to keep a \$500.00 pet deposit. The Landlord has failed to provide any evidence of a pet deposit and as both parties have acknowledged that the \$500.00 security deposit was not paid, I dismiss this portion of the Landlord's claim.

The Tenant has also made a monetary claim for \$1,000.00. The Tenant states that this is for future moving costs based upon his estimates as he is professional mover. The Landlord disputes this claim stating that it has nothing to do with them.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants have failed to establish a claim. The Tenants have failed to provide any estimates/invoices for any losses incurred and as well based upon the Tenant's direct testimony that this was for future moving costs not yet incurred. The Tenant's Application for a monetary claim is dismissed.

The Landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is granted an order of possession and a monetary order for \$1,350.00.

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: February 20, 2013

Residential Tenancy Branch

