



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL COLONIAL C/O GATEWAY PROPERTY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD; MNR, MNSD, OPR, FF
TENANT: CNC, CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

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

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on December 17, 2013 in accordance with section 89 of the Act.

The Landlord said the Tenants did not serve their hearing package to the Landlords.

The hearing started at 2:00 p.m. as scheduled, however the Tenants did not dialled into the conference call. In the absence of any evidence from the Tenants to support the application, the application is dismissed without leave to reapply.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenants' security deposit?

Background and Evidence

This tenancy started on March 1, 2012 as a fixed term tenancy with an expiry date of January 31, 2013 and then continued on a month to month basis. Rent is \$825.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$390.00 on February 1, 2012.

The Landlord said that the Tenant did not pay rent of \$210.00 for the month of December, 2013, when it was due and as a result, on December 17, 2013, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2013 on the door of the Tenants' rental unit. Further the Landlord said the Tenants have unpaid for January, 2014 in the amount of \$30.00. The Landlord said she is claiming a total of \$240.00 in unpaid rent.

As well the Landlord said she wants to end the tenancy and she requested an Order of Possession for as soon as possible in support of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord also said she is seeking to retain a portion of the security deposit to pay the unpaid rent and the Landlord requested to recover the \$50.00 filing fee for this proceeding. The Landlord said her total claim is for \$240.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$290.00.

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. I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$210.00 for December, 2013 and \$30.00 in unpaid rent for January, 2014. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$240.00.

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution.

The Tenant was served the Notice to End Tenancy by posting it on the door of the Tenant's rental unit on December 17, 2013. Consequently, the Tenants were deemed to have received the Notice on December 20, 2013 and would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 25, 2013. The Tenants did not pay the unpaid rent, but they did apply for dispute resolution on December 5, 2013 in regard to a One Month notice to End Tenancy for Cause which was amended to include the 10 Day Notice to End Tenancy dated December 17, 2013. As the Tenants application was dismissed without leave to reapply because the Tenants did not attend the Hearing I grant the Landlord an Order of Possession for two days after service of the Order on the Tenants.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$290.00 of the Tenants' security deposit of \$390.00 as full payment of the rent arrears and to recover the filing fee.

Conclusion

An Order of Possession effective two days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Landlord is ordered to retain \$290.00 of the Tenants security deposit for unpaid rent.

The Tenants' application is dismissed without 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*.

Dated: January 27, 2014

Residential Tenancy Branch

