



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF, O
Tenants: CNR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his agent; two witnesses; and both tenants.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the landlord's claim for compensation for furnace servicing. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The landlord's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the landlord's claim for compensation for furnace servicing. I grant the landlord leave to re-apply for his other claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in 2014 as a month to month tenancy for the monthly rent of \$800.00 due on the 1st of each month. The parties did not agree on whether the tenancy started in February or March or on whether the tenants paid a security deposit and a pet damage deposit. The landlord stated the tenancy began in February 2014 and the tenant stated

it began in March 2014. The tenants stated they paid security deposit of \$400.00 and a pet damage deposit of \$200.00; the landlord submitted the tenants did not pay any deposits. No written tenancy agreement was created.

The tenants submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 8, 2015 with an effective vacancy date of March 22, 2015 due to \$800.00 in unpaid rent.

The landlord submits that the tenants did not pay any rent for the month of March 2015 when it was due and that the landlord's two witnesses and another person attended the rental unit on March 4 or 5 2015 and asked for the payment of rent. The witnesses both testified that the female tenant told them that they did not have the rent money but would have it by March 15, 2015.

The landlord submits that based on this response the landlord issued the 10 Day Notice and served it by posting it on the rental unit door on March 8, 2015 and the landlord has not received any payment of rent since that date including both March and April rent.

The tenants submit that they paid rent directly to the landlord when it was due on the 1st of March and that he had requested a receipt because the landlord had the tendency to forget but the landlord did not issue a receipt. The tenant stated that because the landlord would not issue him a receipt for April 2015 rent either he refused to pay rent for April.

The female tenant testified that the when the three representatives of the landlord spoke with her on March 4 or 5 they were there to harass the female tenant about other issues related to the tenancy and she did not talk to them about rent or suggest that they would not be able to pay it until the 15th of March.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

I note that neither party has provided documentary evidence in support of their position and rely solely on the testimony of the parties themselves or in the case of the landlord on his witnesses. In such cases, the burden of proof lies with the party putting forward their position.

I find the landlord has two witnesses testifying that the female tenant confirmed with them on March 4 or 5, 2015 that the tenants had not paid rent and that they intended to pay it on March 15, 2015. I note the female tenant disputes that the content of the conversation between them on that date.

The landlord submits that they have not received any payment of rent for the months of March and April. I note that it is difficult for a landlord to provide any evidence to support that he has **not** received a payment. On the contrary, if the tenants had paid rent they should be able to

provide some evidence, such as a bank statement that they withdrew the amount of money owed from their bank on or before the date it was payable.

In the case before me, I favour the testimony of the two witnesses for the landlord over the testimony of the female tenant as they corroborate each other's testimony. I also find the tenants have failed to provide any evidence to corroborate that they provided payment to the landlord.

Therefore, and on a balance of probabilities, I find the tenants have failed to pay rent as described by the landlord, in the amount of \$1,600.00 and that a valid 10 Day Notice to End Tenancy for Unpaid Rent was issued, effective March 22, 2015.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,650.00** comprised of \$1,600.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 20, 2015

Residential Tenancy Branch

