



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me to cancel a purported Notice to End Tenancy, issued to them by the landlord on 8 March 2023.

The landlord appeared at the hearing on 3 April 2023. The tenants also appeared.

Preliminary Matter

At the hearing, the tenants clarified that their application was in response to a text message that they received from the landlord on 8 March, informing them that they had two days in which to move out of the rental unit because someone else was moving in. The tenants argued that this text was an improper attempt to end a tenancy.

But the parties also testified that the landlord later issued a 10-day Notice to End Tenancy for Unpaid Rent and Utilities on 23 March. This notice was a properly-completed RTB form, and alleged \$2,900.00 in unpaid rent for the month of March, and \$1901.55 in unpaid utilities [the 'Proper Notice'].

During the hearing, the tenants applied to amend their application to cancel the Proper Notice. And the landlord conceded that the text sent on 8 March was an ineffective attempt to end the tenancy.

Accordingly, I amended the tenants' application to address the Proper Notice, rather than the text of 8 March.

Issues to be Decided

Should I cancel the Proper Notice?

If I should not, then is the landlord entitled to:

1. an order of possession; and
2. an order that the tenants pay the landlord outstanding rent and utilities?

Background and Evidence

The parties agreed that, under the tenancy agreement, the rent owing each month is \$2,900.00.

The landlord told me the following about the unpaid rent and utilities:

- the tenants did not pay any rent for March or April; and
- the tenants did not pay \$1901.55 for electricity and water, covering the period June 2022 to February 2023 [the 'Utilities'].

The landlord did not offer any copies of invoices from utility providers, or of a demand letter to the tenants, or any other documents to support their claim for Utilities.

The tenants told me that they had paid some of the Utilities, but not all. They could not tell me how much they had paid of the Utilities. They denied ever receiving a demand to pay the Utilities, and they could not understand why the Utilities were so high.

They did concede that they did not pay rent for March and April. They told me that they decided not to do so for two reasons:

1. one of the tenants had been defrauded by someone of the money they would have used to pay rent for March; and
2. there were various issues with the rental unit (mold, a leaking fridge, an unlabelled fuse box, and a rotten deck [the 'Issues']) such that they weren't sure if they were still required to pay rent.

The tenants clarified that, despite these Issues, neither of them paid anyone to repair anything at the unit.

Analysis

The tenants conceded that they did not pay rent for March and April. Based on the testimony of the parties, I calculate this as \$5,800.00 owing to the landlord.

The tenants appeared to argue (or at least muse) that they did not have to pay rent, at least for April, because of the Issues.

The only circumstances, however, in which a tenant might successfully argue such a position is if emergency repairs were required, *per* section 33 of the *Residential Tenancy Act* [the 'Act']. But, the Issues testified to by the tenants do not fit the definition of emergency repairs in section 33 (1) of the Act. Furthermore, only where:

- the tenant has paid for such emergency repairs after a landlord has refused to do so; and then
 - the landlord refuses to reimburse the tenant for such repairs
- can the tenant lawfully withhold rent (*per* section 33 (7) of the Act).

The tenants did none of this: they did not pay for any repairs, nor did they ask the landlord to reimburse them for such repairs.

I find, therefore, that the tenants had no lawful basis to refuse to pay rent for March and April.

As for the Utilities, the landlord offers no corroborating documentation to support their claim, and the tenants dispute the amount. And so I make no finding as to how much of the Utilities may or may not be owed to the landlord.

Conclusion

I order that the tenant pay to the landlord \$5,800.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlord to retain the tenants' security deposit of \$1,450.00 in partial satisfaction of this sum, *per* section 72 (2) (b) of the Act.

The landlord must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlord may file this order in the Small Claims

Division of the Provincial Court of British Columbia. Then the landlord can enforce my order as an order of that court.

Section 55 (1) of the Act requires that I make an Order of Possession in favour of the landlord. This order is effective two days after the landlord serves it on the tenants. If the tenants or any occupant of the rental unit fail to comply with my order, then the landlord can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 12 April 2023

Residential Tenancy Branch