



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 MT CNR

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlord's application I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for unpaid rent. Therefore, I will deal with the Landlord's request for an Order of Possession and the monetary request relating to unpaid rent and late fees and I dismiss the balance of the Landlord's application with leave to re-apply.

The female Tenant's first name has been spelled in two common ways throughout all of the evidence that was before me. It is written ending in "ey" as well as "ay". Therefore, the style of cause relating to this Decision and Orders will show the female Tenant's name spelled both ways with a.k.a., the abbreviation for "also known as", pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord initially filed an application through the Direct Request Process on June 26, 2015. As the Tenant had filed an application the Landlord's application was to be scheduled to be heard in the participatory hearing as a cross application. As a result the Landlord filed a Landlord's Application for Dispute Resolution on July 3, 2015 seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenant filed her application on June 24, 2015 seeking more time to cancel a Notice to end tenancy and an Order to cancel or set aside a Notice to end tenancy issued for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord and the female Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed that her co-tenant, her son, was in the room with her and he would not be providing testimony regarding these matters as he was only 18 years old. She submitted that she would be speaking on behalf of both of them. The Tenant filed her application listing only one Tenant and the Landlord's application listed two respondent Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Landlord affirmed that she received the Tenant's application and Notice of hearing documents; however, she did not receive any documentary evidence from the Tenants. The Tenant affirmed that she did not serve documentary evidence in support of her application. The Tenant submitted that she did not receive copies of the Landlord's application or the Landlord's evidence.

The Landlord submitted oral evidence that she sent two separate registered mail packages one to each named respondent Tenant. She submitted Canada Post tracking information. The Canada Post tracking information was reviewed during the hearing which confirmed that both packages were signed received on July 9, 2015.

The Landlord argued that she sent each package to the return address which the Tenant wrote on the envelope in which she received the Tenant's application. That tracking number was. The Landlord stated that she had learned prior to their last hearing in March 2015 that the Tenant had lost the mail box key for the rental unit address mail box, so she knew better than to try and mail her applications to the rental unit address.

The Tenant confirmed that she mailed her application and notice of hearing documents to the Landlord while she was in another province. She asserted that she flew back to the rental unit on June 25, 2015 and again on August 9, 2015 and she did not receive the Landlord's application or evidence so she did not know what the Landlord was seeking.

After further clarification the Tenant provided contradictory testimony as to her current mailing address. She confirmed that she did not have keys to the mailbox and then

stated she receives her mail at the rental unit address because she is no longer using the forwarding address listed on the envelope she sent the Landlord on June 27, 2015.

62(3) of the *Act* stipulates in part, that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*.

After careful consideration of the above I concluded and ordered that each Tenant was sufficiently served Notice of the Landlord's application and her evidence, pursuant to section 62(3) of the *Act*. Accordingly, I proceeded to hear the matters pertaining to both applications for Dispute Resolution.

During the hearing each party was given a full and fair opportunity to present their evidence and respond to each other's submissions. Following is a summary of that evidence and includes only that which is relevant to the matters before more.

Issue(s) to be Decided

1. Is this tenancy agreement enforceable against the minor who signed the tenancy agreement?
2. Should the 10 Day Notice be upheld or cancelled?
3. If upheld, should the Landlord be granted an Order of Possession?
4. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The undisputed evidence was the parties entered into a month to month written tenancy agreement that began on September 1, 2014. Rent was payable on the first of each month in the amount of \$890.00 and on August 29, 2014 the Tenants paid \$445.00.

The Landlord testified that both Tenants rented the unit; however, the male Tenant, the female Tenant's son, was the person who signed the tenancy agreement as he arrived prior to his mother. The Landlord submitted that she had not seen the female Tenant for several months until she collected rent from her sometime after Christmas when she was there.

The Tenant submitted that she signed a different copy of the tenancy agreement and had emailed it to the Landlord prior to them taking possession of the rental unit. The Landlord demanded that her son sign another tenancy agreement when he took possession of the rental unit.

The parties attended dispute Resolution on April 23, 2015 regarding non-payment of rent. During that hearing they entered into a settlement agreement. The file number for the previous hearing is listed on the front page of this Decision.

The Landlord submitted that when the Tenants failed to pay the full amount of rent due June 1, 2015, she posted a 10 Day Notice on their door on June 17, 2015, in the

presence of a witness. The Notice was issued for unpaid rent of \$190.00 plus a \$50.00 late payment fee. She stated that she now understands the late payment fee can only be \$25.00 although the tenancy agreement indicated she would be charging \$50.00 each week for late payments.

The Landlord argued that no rent has been paid for July or August 2015. As a result she is seeking compensation of: \$190.00 + \$25.00 late fee for June; \$890.00 plus \$25.00 late fee for July; and \$890.00 plus \$25.00 late fee for August 2015.

The Tenant testified and confirmed receipt of the 10 Day Notice on June 17, 2015 once she returned home from work. She asserted that she called the Landlord that evening to discuss the 10 Day eviction Notice and to remind the Landlord that their requested repairs to the window and under the sink remained incomplete.

The Tenant argued that she paid the Landlord cash of \$890.00 on July 1, 2015 and again on July 29, 2015 for July and August rents. When asked why she did not submit documentary evidence to prove her rents had been paid in full the Tenant argued the Landlord took the cash and said she would return with a receipt and on each occasion the Landlord failed to give her a receipt. The Tenant then changed her argument to say she did not submit evidence because she did not know the Landlord was claiming for July and August 2015 unpaid rent. No testimony was provided regarding the \$190.00 owed for June 2015 rent.

In closing the Landlord submitted that no cash payments had been received from the Tenants. She noted that if the Tenant was in another province so it would be highly unlikely that she would fly back twice just to hand the Landlord cash payments for rent. She also questioned why the Tenant would not pay her rent with a money order or certified cheque or any other method where she could prove the rent was paid; which it was not.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

The Tenancy Agreement

Section 3 of the *Act* provides that person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

Section 1 of the *Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a

rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Regarding the 10 Day Notice

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 46(1) of the *Act* provides that 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 effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the Tenant on why she did not apply within the prescribed timeframes do not constitute exceptional circumstances. Therefore, I dismiss the Tenant's application without leave to reapply.

Regarding the Request for an Order of Possession

Section 55(1) of the *Act* provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession, and the director dismisses the tenant's application or upholds the landlord's notice.

Regarding the request for a Monetary Order

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 7(1)(d) of the *Regulation* provides in part, that a landlord may charge a non-refundable fees of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was the rental unit had been occupied by the male and the female Tenants. The male Tenant was a minor at the time he signed the tenancy agreement and the female Tenant signed an agreement and emailed it to the Landlord prior to her arrival. Accordingly, I find that both the male and female Tenants were reasonable to this tenancy agreement, pursuant to sections 3 and 1 of the *Act*.

In this case the Tenants received the 10 Day Notice on June 17, 2015; therefore, the effective date of the Notice was **June 27, 2015**. The Tenant filed her application to dispute the Notice on June 24, 2015, seven days after receipt of the Notice.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Tenant bears the burden to prove they paid their rent in accordance with section 26 of the *Act* and in accordance with the required timeframes listed on the 10 Day Notice. After consideration of the Tenant's contradictory testimony and in absence of

documentary evidence to prove the contrary, I favored the Landlord's evidence that the \$190.00 owed for June 2015 remained unpaid and no payments have been received towards July or August 2015 rent.

Based on the above, I find that even if there was documentary evidence to support an extension of time to file their application, which there was not, there was insufficient evidence to prove the \$190.00 rent was paid by June 22, 2015, as required pursuant to the 10 Day Notice. Accordingly, I dismiss the Tenant's application to dispute the 10 Day Notice, without leave to reapply, and I grant the Landlord's request for an Order of Possession, pursuant to section 55 of the *Act*.

The Landlord claimed unpaid June 2015 rent of \$190.00, in accordance with section 26 of the *Act*. Based on the above I conclude that at the time of this hearing the \$190.00 owed for June 1, 2015 rent remained unpaid. Therefore, I award the Landlord unpaid rent for June 2015, in the amount of **\$190.00**, pursuant to sections 7 and 67 of the *Act*.

In addition, I also favored the Landlord's submissions that no payments were received for July and August 2015. As noted above this tenancy ended **June 27, 2015**, the effective date of the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for July and August 2015. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of July and August 2015, in the amount of **\$1,780.00** (2 x \$890.00), pursuant to sections 7 and 67 of the *Act*.

If the Landlord suffers additional loss they are at liberty to file another application for that loss.

The tenancy agreement provided for late payment fees which the Landlord admitted were too high so she was now seeking \$25.00 for the late payment fee. The evidence supported the June 1, 2015 rent was late, as it was not paid in full. Therefore I find the Landlord has proven the loss and I award their claim for June 2015 late fees in the amount of **\$25.00**, pursuant to sections 7 and 67 of the *Act*.

As noted above, this tenancy ended **June 27, 2015**, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in the tenancy agreement are no longer in effect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for July and August 2015 as the tenancy had ended. Therefore, the claims for July and August late fees are dismissed, without leave to reapply.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order –This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid June 2015 Rent	\$ 190.00
Use & Occupancy & Loss of Rent	1,780.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,020.00
LESS: Security Deposit \$445.00 + Interest 0.00	<u>-445.00</u>
Offset amount due to the Landlord	<u>\$1,575.00</u>

Conclusion

The Tenant was not successful with her application and it was dismissed in its entirety.

The Landlord's claims for losses not related to unpaid rent, use and occupancy, or late payment fees were dismissed, with leave to reapply.

The Landlord was successful with her request for an Order of Possession and her application for a Monetary Order. The Landlord was awarded \$2,020.00 which was offset against the Tenants' security deposit and interest of \$445.00 leaving a balance due to the Landlord of \$1575.00. .

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order for **\$1,575.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Small Claims Court and 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: August 24, 2015

Residential Tenancy Branch

