



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD FF

For the tenant: CNR OLC ERP RP RPP LRE LAT RR O

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 2, 2015, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make regular repairs to the rental unit or site, for authorization to change the locks to the rental unit, to suspend or set conditions on the landlord’s right to enter the rental unit, for the landlord to return my personal property, and to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlord W.M. attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the application and documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review

those documents prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is to determine if the tenancy is going to continue. I find that not all the claims in the tenant's Application for Dispute Resolution (the "Application") are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice, the landlords' request for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenant's security deposit, and the request from both parties to recover the cost of the filing fee. The balance of the tenant's Application will be determined at the end of this proceeding.

In addition to the above, pursuant to section 64(3) of the *Act*, I have amended both applications to include both first names of the tenant, his legal name and his common name.

Issues to be Decided

- Should the 10 Day Notice dated November 2, 2015, be cancelled or upheld?
- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on June 1, 2015 and that monthly rent in the amount of \$750 is due on the first day of each month. The tenant

paid a security deposit of \$375 at the start of the tenancy, which the landlords continue to hold.

The landlords are claiming \$1,100 for unpaid rent, comprised of \$350 owing for October 2015 rent, plus full November rent of \$750 owing. The tenant confirmed that he has not paid the landlords the \$1,100 being claimed by the landlords.

A copy of the 10 Day Notice dated November 2, 2015 was submitted in evidence. The tenant confirmed that he received the 10 Day Notice on November 4, 2015 and applied to dispute the 10 Day Notice on November 8, 2015. The effective date listed on the 10 Day Notice is November 15, 2015.

The tenant continues to occupy the rental unit. The landlords are seeking an order of possession and a monetary order.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

The tenant confirmed during the hearing that he failed to pay \$350 for October 2015 rent, and has not paid any of the \$750 rent owing for November 2015. As a result, I **dismiss** the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice dated November 2, 2015, is valid and I **uphold** the 10 Day Notice.

Order of Possession – The effective vacancy date of the 10 Day Notice was November 15, 2015, which has passed and the tenant continues to occupy the rental unit. Given the landlords' request and application for an order of possession, and pursuant to section 55 of the *Act*, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlords' 10 Day Notice, I **grant** the landlords an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent – I find that rent of \$1,100 remains owing, comprised of \$350 owing for October 2015, plus \$750 owing for November 2015. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the rental unit. The landlords will not regain possession of the unit until after service of the order of possession. I find the

landlords have met the burden of proof and **I find** the landlords have established a monetary claim of **\$1,100** as claimed.

As the landlords have succeeded with their application, **I grant** the landlords the recovery of their **\$50** filing fee.

Monetary Order – I find the landlords have established a total monetary claim of **\$1,150**, comprised of \$1,100 in unpaid rent, plus the recovery of the \$50 filing fee.

I ORDER the landlords to retain the tenant's full security deposit of \$375 in partial satisfaction of the landlords' monetary claim. I note that the security deposit has not accrued interest since the start of the tenancy. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$775**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply, due to insufficient evidence.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlords have established a total monetary claim of \$1,150, comprised of \$1,100 in unpaid rent, plus the recovery of the \$50 filing fee.

The landlords have been ordered to retain the tenant's full security deposit of \$375 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$775. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I will now deal with the remainder of the tenant's application that was severed above pursuant to section 2.3 of the Rules of Procedure. As the tenancy ended on November 15, 2015, which is the effective vacancy date of the 10 Day Notice, **I dismiss** the remainder of the tenant's application **without leave to reapply** with the exception of the tenant's request for the landlord to return his personal property. If such a situation

exists, the tenant is at liberty to reapply for the return of his personal property. I note that my decision does not extend any applicable time limits under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 1, 2015

Residential Tenancy Branch

