



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN MANAGEMENT CO LTD DBA HAVEN PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, CNR, RP, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants have applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence. The tenants stated that they did not receive the landlord's

notice of hearing package and the submitted documentary evidence. The landlord stated that the tenants were served with the landlord's notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on November 17, 2015 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The landlord stated that the package was returned to the sender by Canada Post after attempts of service were made by Canada Post. The landlord stated that an online review on the Canada Post website shows that Canada Post left notice(s) of attempted service at the correct address. The landlord stated that Canada Post then returned the items as unclaimed by the tenants. The tenants stated that no notices were received. The landlord also stated that a copy of the hearing package and the submitted documentary evidence was emailed to the tenants. During the hearing the tenant, D.K. gave affirmed testimony that he had received the landlord's documentary evidence and had even referred to specific pages and documents in the landlord's documentary evidence. Although the tenants did not claim the Canada Post Registered mail packages, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord properly served the tenants with the notice of hearing packages and the submitted documentary evidence by Canada Post Registered Mail on November 17, 2015 as per sections 88 and 89 of the Act. This is also supported by the tenants' reference to specific documentary evidence during the hearing. When asked during the hearing the tenant, D.K. stated he must have received the landlord's notice of hearing and submitted documentary evidence, but cannot remember how or when he did. The tenants are deemed to have received the notice of hearing and the documentary evidence as per section 90 of the Act 5 days later.

Preliminary Issue

At the outset the landlord clarified that 2 10 Day Notice(s) for unpaid rent were issued. The tenant has applied to cancel the 10 Day Notice dated October 20, 2015. The landlord has stated that she is cancelling the notice dated October 20, 2015 and is proceeding with the 10 Day Notice dated November 6, 2015. As such, the tenant has been successful in their application to cancel the 10 Day Notice dated October 20, 2015.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Are the tenants entitled to an order for the landlord to make repairs?

Are the tenants entitled to an order to provide services or facilities agreed upon but not provided?

Background and Evidence

Both parties confirmed that no signed tenancy agreement was made. Both parties agreed that the tenant entered into an agreement for rental of the property for \$1,500.00 a month payable on the 1st day of each month and that a \$750.00 security deposit was paid. A condition inspection report for the move-in was completed by both parties at the beginning of the tenancy on June 30, 2015. Both parties agreed that the tenancy began on July 1, 2015.

The landlord seeks an order of possession and a monetary order for unpaid rent and utilities for \$3,387.00. This consists of:

\$387.00	Unpaid Utilities
\$3,000.00	Unpaid Rent (November \$1,500.00 and December \$1,500.00)

The landlord stated that the tenants were served with a 10 Day Notice dated November 6, 2015 by posting it to the rental unit door on November 6, 2015. The tenant has confirmed receipt of the 10 Day Notice dated November 6, 2015. The 10 Day Notice displays an effective end of tenancy date of November 19, 2015 and states that the tenants failed to pay rent of \$1,500.00 that was due on November 1, 2015. The 10 Day Notice also states that the tenant failed to pay rent of \$387.00 following a written demand on September 30, 2015. The landlord stated that the tenants have also failed to pay any rent for December 2015 of \$1,500.00.

The tenants did not dispute that rent remains unpaid, but was emphatic that no agreement was made to pay the landlord \$1,500.00 in monthly rent. The tenant, D.K. stated in his direct testimony, "I agreed to pay \$1,500.00 a month."

The landlord stated that the landlord accepted \$750.00 for a security deposit and failed to have the tenants sign a tenancy agreement prior to beginning the tenancy. The landlord stated that the tenants paid rent of \$1,500.00 beginning July 1, 2015 for 4 months until October 2015.

The tenants seek an order to cancel the 10 Day Notice dated November 6, 2015, a monetary order request for \$831.32, an order for the landlord to make repairs to the unit, an order for the landlord to provide facilities (shed and garage) and recovery of the filing fee.

The tenant's monetary claim of \$831.32 consists of:

\$750.00	Compensation for loss of use
\$21.32	Pictures
\$60.00	Gas

The tenants seek compensation of 50% of the monthly rent because the tenant is unable to use the shed and garage on the property that was promised for their exclusive use. The tenants stated that the monetary claim is "what I think I deserve" for not having the use of the shed and garage.

The tenants seek a repair order for:

- Finish painting rental unit.
- Repair backyard steps.
- Caulk around bathtub and toilet.

The landlord disputes these claims made by the tenant stating that the rental unit was completely renovated 3 years ago. The landlord stated that a condition inspection report for the move-in was completed with the tenant, T.N. which states,

- Toilet caulk. Grout repair on bathroom floor and tub.
- Paint patches.
- Closet needs glide.
- Patio stones uneven at bottom of stairs.
- Stones loose on top step, to gate.

The landlord stated that all of these issues were dealt with by the landlord. The landlord relies upon:

Invoice dated August 22, 2015 from a home and garden services which specified:

Paintwork:	Applied two coats of paint and feathered edges.
Carpentry Work:	supplied and fitted new slider kit for by-fold door.

Paving Work: Paving slabs at bottom of stair case from deck to backyard were uneven and were a potential tripping hazard. Lifted...slabs and found that they had been laid on soil instead of base rock. Removed soil and re-bedded all slabs on base rock.

The landlord stated that the owner of the property removed the capping stones that sat on the cinder blocks and gravel. The landlord stated that this is a walkway for the basement tenant who has never complained about its use. The landlord stated that the tenant no reason to access this area and has alternate access to the back gate across the grass area.

The tenants seek an order to have the landlord provide exclusive use of the shed and garage. The landlord stated the tenants do not have exclusive use of the garage and shed. The tenants now have use of the garage except for a few minor items stored as maintenance spare parts. The tenants stated that all of his personal belongings are in the garage and because of that he can't park his car in the garage. The landlord also stated that the tenant was never promised exclusive use of the shed as it is used to store basic maintenance tools and a lawn mower for the tenant's use in maintaining the property. The tenant, D.K. stated that he was verbally promised the use of these two areas. The landlord disputed this. The tenant was unable to provide any supporting evidence that exclusive use was promised by the landlord.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find based upon the undisputed evidence of both parties that the landlord properly served the tenants with the 10 Day Notice dated November 6, 2015 by posting it to the rental unit door on November 6, 2015. The tenants are deemed to have received it 3 days later. The tenant, D.K. confirmed in his direct that he received the 10 day Notice dated November 6, 2015.

I also find that although there is no signed tenancy agreement made by both parties that a tenancy agreement was made. The landlord provided undisputed testimony that the rental unit was advertised at \$1,500.00 per month. Both parties confirmed that the tenants paid a \$750.00 security deposit (which is equal to ½ of the monthly rent of \$1,500.00). Although the tenants were emphatic that no signed tenancy agreement

was entered into, the tenant, D.K. gave undisputed affirmed testimony that “I agreed to pay \$1,500.00 a month.” This is further supported that the tenants have been paying \$1,500.00 per month since the beginning of the tenancy as provided in the landlord’s undisputed testimony.

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find based upon the tenants own evidence that the tenants have failed to pay rent for November 2015 for \$1,500.00 and December 2015 for \$1,500.00 while still occupying the rental. The tenants have provided no evidence to show a right under the Act to deduct or withhold all or a portion of the rent.

The landlord is entitled to an order of possession for unpaid rent for November and December of 2015. The landlord is granted an order of possession. The tenants must be served with this order. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the tenancy is at an end, I decline to make any orders regarding the tenants’ requests for the landlord to make repairs and to provide facilities. I note that the tenants failed to provide any evidence to show that the landlord promised exclusive use of the shed. Although the tenant applied for use of the garage, it is clear based upon the tenant’s own direct testimony that it is currently being used by the tenant to store their belongings. This portion of the tenants’ application is dismissed.

As for monetary claim, I find that the landlord has also established an entitlement to unpaid rent for \$3,000.00 for November and December of 2015. The landlord’s claim for unpaid utilities was disputed by the tenants. The landlord was unable to provide any evidence to show an entitlement to unpaid utilities. The landlord did not provide a copy of the written demand for unpaid utilities as stipulated on the 10 Day Notice dated November 6, 2015. The landlord did not provide a copy of the invoice for utilities. This portion of the landlord’s claim is dismissed for lack of sufficient evidence.

As for the tenants’ monetary claim of \$750.00, I find that the tenants have failed to establish an entitlement to exclusive use of the shed. The tenants are currently using the garage as storage based upon the tenants own direct testimony. The tenants have provided insufficient evidence to satisfy me that exclusive rights were granted to them for the use of the shed.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenants' claims for recovery of litigation costs (photographs and gas) are dismissed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord applied to keep the tenant's \$750.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenant has been successful in their application to cancel the 10 Day Notice dated October 20, 2015 as the landlord has cancelled it.

The landlord is granted an order of possession. The landlord is also granted a monetary order for \$2,300.00.

The tenants' application for repairs and facilities is dismissed.

The tenants' monetary claim is dismissed.

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: December 10, 2015

Residential Tenancy Branch

