



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- An Order of Possession for unpaid rent pursuant to section 55.
- A monetary order for unpaid rent and late fees pursuant to section 67.
- An Order to be allowed to keep all or part of the security deposit pursuant to section 38.
- To recover the filing fee from the tenant for this application pursuant to section 72.

The tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both landlords (Landlord J and Landlord L) attended the hearing. Landlord J provided evidence including sworn undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on November 4, 2015. The landlord confirmed receipt of the tenant's application to cancel the notice to end tenancy. The tenant confirmed receipt of the landlord's application for dispute resolution hearing package.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent and/or damages?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

Landlord J gave evidence that the residential tenancy agreement began on May 1, 2015. The rental amount for this unit was established at \$1450.00 payable on the first of each month.

Landlord J testified that she continued to hold the \$725.00 security deposit paid by the tenant on May 1, 2015. The landlord provided undisputed sworn testimony that, while a pet damage deposit was required at the outset of the tenancy, it was never paid by the tenant.

The landlords applied for an Order of Possession for unpaid rent for the months of October, November 2015. Landlord J testified that she has issued notices to the tenant for failure to pay rent every month for the last three months. She testified that the tenant did not pay October 2015 rent in full but has been attempting to make payments towards the outstanding amount. Landlord J testified that the tenant did not pay November 2015 rent and the entire November 2015 rental amount remains unpaid as of the date of this hearing. Landlord J testified that the tenant still resides in the rental unit but that she has not paid any rent for December 2015 as of the date of this hearing.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on November 4, 2015. Landlord J testified that the tenant did not pay the outstanding October or November 2015 rent after receiving the 10 Day Notice on November 4, 2015. The tenant filed on November 12, 2015 to cancel that 10 Day Notice.

The tenant testified that she had a good relationship with her landlords and that she discussed her outstanding rent with them. She testified that the landlords were allowing her to make payments for the outstanding amounts and that she did not believe they wished to end her tenancy. However, she acknowledged that she has received two previous notices (September and October) to end tenancy with respect to unpaid rent.

The landlord is also seeking a monetary award of \$3030.00 for the months of October, November and December 2015 rent as follows;

Item	Amount
Unpaid Rent (outstanding – October 2015)	\$130.00
Unpaid Rent (November 2015)	1450.00
Unpaid Rent (December 2015)	1450.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought by Landlord	\$2355.00

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” I find that the tenant failed to pay rent in accordance with the *Act* and her residential tenancy agreement. I find that the tenant did not apply within the time allowed to dispute the 10 Day Notice issued by the landlord.

The tenant failed to pay the outstanding rental amount within five days of receiving the 10 Day Notice to End Tenancy. The tenant made an application pursuant to section 46(4) of the *Act* but made it after five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to either pay rent or dispute the Notice to End Tenancy within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 15, 2015. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

I find that the landlords are entitled to receive an order for unpaid rent from October, November and December 2015. I accept the uncontested evidence offered by the landlord that the December and November rent have not been paid. I accept the uncontested evidence of the landlord that \$130.00 remains outstanding from October 2015 despite payment efforts by the tenant. I accept that the landlords were clear with the tenant, in accordance with policy guidelines and procedure related to the *Residential Tenancy Act* that any payment accepted was for use and occupancy only and did not amount to an agreement to reinstate the tenancy. I am issuing the attached monetary order that includes the landlords' application for \$3030.00 in unpaid rent for October, November and December 2015.

Landlord J testified that she continues to hold a security deposit of \$700.00 plus any interest from May 1, 2015 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

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

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Item	Amount
Unpaid Rent (outstanding – October 2015)	\$130.00
Unpaid Rent (November 2015)	1450.00
Unpaid Rent (December 2015)	1450.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this Application	50.00

Total Monetary Award to the Landlord	\$2355.00
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The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 18, 2015

Residential Tenancy Branch

