



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNDC FF CNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application was received at the Residential Tenancy Branch on May 19, 2016 (the “Landlords’ Application”).

The Landlords have applied for the following relief pursuant to the *Act*: an order of possession for unpaid rent or utilities; an order permitting the Landlords to retain all or part of the security deposit paid by the Tenants; a monetary order for money owed or compensation for damage or loss; and an order granting recovery of the filing fee paid by the Landlord.

Although not indicated on the Application, the Application and documentary evidence submitted by the Landlords make it clear that the Landlords are seeking a monetary order for non-payment of rent. Accordingly, pursuant to section 64 of the *Act*, I amend the Landlords’ claim to include a request for a monetary order for unpaid rent.

The Tenants’ Application was received at the Residential Tenancy Branch on May 13, 2016, and was amended on May 19, 2016 (the “Tenants’ Application”).

The Tenants applied for the following relief pursuant to the *Act*: an order cancelling the Landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 7, 2016 (the “10 Day Notice”); and an order granting recovery of the filing fee.

Both parties were represented at the hearing. The Landlords were represented by R.T. Although present during the hearing, A.S. did not provide evidence. The Tenants were represented by J.R. Although present during the hearing, J.S. did not provide evidence. R.T. and J. R. provided affirmed testimony.

No issues were raised with respect to the documentary evidence submitted by the parties in advance of the hearing.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written 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.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent?
2. Are the Landlords entitled to a monetary order for unpaid rent and utilities?
3. Are the Landlords entitled to recover the filing fee?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Landlords submitted with their documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy from May 1, 2015 to November 1, 2015. Since that time, the tenancy has continued on a month-to-month basis. Rent in the amount of \$1,150.00 is due and payable on the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$590.00 at the beginning of the tenancy.

The Landlords' Claims

On behalf of the Landlords, R.T. testified that rent in the amount of \$1,150.00 was not paid when due on May 1, 2016. She says the Tenants requested additional time to pay rent, and the Landlord granted them until May 6, 2016 to do so.

R.T. stated that she contacted the Tenants to pay rent on May 6, 2016. That evening, she attended the Tenants' rental unit to collect the rent and an argument arose. The argument arose out of R.T.'s request that the Tenants' children play more quietly. Some of the argument was recorded by the J.S. and was submitted by the Tenants in support of the Tenants' Application.

According to R.T., the Landlords issued the 10 Day Notice because rent was not paid on May 6, 2016, as agreed. The Landlords submitted with their documentary evidence

a Proof of Service form confirming service of the 10 Day Notice on the Tenants, in person, on May 8, 2016.

Although the Landlords also claimed that June rent has not been paid, R.T. acknowledged during the hearing that the Tenants sent them an e-transfer on June 1, 2016. A screenshot of the e-transfer was submitted into evidence by the Tenants. However, the Landlords have not processed the e-transfer pending the outcome of these proceedings.

The Tenants' Claims

The Tenants disputed the Landlords' claims and seek an order cancelling the 10 Day Notice. They say rent for May 2016 was paid in cash to the Landlords on May 6, 2016. J.R. testified that although J.S. requested a receipt for the cash payment, the Landlords have refused to provide one.

Some of the argument referred to above was captured on camera by the Tenants. This video evidence was submitted by the Tenants in support of their Application.

The video evidence confirmed the tone of the confrontation. The parties were clearly agitated. In particular, J.S. expressed anger about R.T.'s request that the children be quieter when playing. Throughout the video clip labelled "May 6th video 1 of 2", J.S. continuously speaks over R.T.

The video evidence also reveals a physical altercation that occurred when J.R. grabbed R.T.'s arm. During the hearing, J.R. acknowledged that she grabbed R.T.'s arm but advised she did so because R.T. was poking J.S. in the chest, although this is not observed in the video evidence.

The video evidence also reveals a verbal disagreement between J.S. and a woman who appears to be another tenant. It appears this woman called police as a result of the argument between the R.T. and the Tenants.

The video evidence shows the police attended the rental unit. In it, J.S. can be heard describing the incident to police. He stated that R.T. came to their rental unit to collect the rent. He advised the officer "we are a few days late on our rent". However, he then proceeded to tell the officer about noise- and harassment-related issues with other tenants and the Landlords. J.S. also advised the police officer that R.T. told the Tenants they had to move out, and that "nobody touched anyone...there was no physical assault".

The Tenants say they paid rent in cash. However, at no point in the video evidence submitted by the Tenants does this payment appear in R.T.'s hand.

Throughout the hearing, R.T. was adamant that rent for May 2016 has not been paid.

Analysis

Section 26 of the *Act* requires tenants to pay rent when due, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

If rent remains unpaid on any day after the day it is due, section 46 of the *Act* permits a landlord to end the tenancy.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Landlords' Claims

On behalf of the Landlords, R.T. stated rent was not paid as agreed on May 6, 2016. The Tenants say rent was paid in cash but that the Landlords have refused to issue a receipt.

Where the evidence of the parties differs with respect to payment of rent, I prefer that of the Landlords.

In coming to this conclusion, I rely in part on the video evidence submitted by the Tenants, which is inconsistent. In the video labelled "May 6th video 2 of 2", at 10:16, J.S. advises the police officer in attendance that R.T. told the Tenants they had to move out, and that there was no touching during the evening.

The video evidence submitted by the Tenants demonstrates otherwise. In the video labelled "May 6th video 1 of 2", R.T. suggests the Tenants could move out if they are unhappy. Further, the video evidence is clear that there was a physical component to the altercation that night.

In addition, the video evidence submitted by the Tenants does not confirm payment of rent. At no time during the video evidence does cash or an envelope appear in R.T.'s hands.

As noted above, R.T. remained adamant throughout the hearing that rent was not received in cash as alleged by the Tenants.

I find on a balance of probabilities that the Landlords have not been paid rent for May 2016.

I also find that the June 1, 2016 e-transfer, although sent to the Landlords by the Tenants on that date, has not been processed by the Landlords.

Accordingly, pursuant to section 67 of the *Act*, I find the Landlords have not received rent for May and June 2016. The Tenants owe the Landlords \$2,300.00 in outstanding rent.

As the Landlords' Application has been successful, I grant the Landlords recovery of the \$100.00 filing fee.

The Landlords have requested that the security deposit of \$590.00 be applied in partial satisfaction of the monetary award.

Accordingly, pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$1,810.00, which has been calculated as follows:

Claim	Amount
May 2016 rent:	\$1,150.00
June 2016 rent:	\$1,150.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$590.00)</i>
TOTAL:	\$1,810.00

Further, the Landlords have requested an order of possession. Pursuant to section 55 of the *Act*, I grant the Landlords an order of possession, which will be effective two (2) days after service upon the Tenants.

The Tenants' Claims

In light of my determination above, it is not necessary for me to consider the Tenants Application further.

The Tenants' Application is dismissed.

As the Tenants have not been successful, I decline to grant them recovery of the filing fee.

Conclusion

I grant the Landlords a monetary order in the amount of \$1,810.00. The order may be filed in and enforced as an order of the Provincial Court (Small Claims) of British Columbia.

I grant the Landlords an order of possession, which will be effective two (2) days after service upon the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants' Application 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: June 17, 2016

Residential Tenancy Branch