



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenant: CNR RR

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, 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 dated October 12, 2016 (the “10 Day Notice”) and for a rent reduction.

The landlord and the tenant 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. 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.

The tenant confirmed receiving the landlord’s application and documentary evidence package from the landlord and that he had the opportunity to review that evidence prior to the hearing. The tenant testified that he did not serve the landlord with documentary evidence. I find the tenant was sufficiently served with the landlord’s documentary evidence under the *Act* and that both parties were served with the applications as the parties confirmed service of same.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is continuing, is the tenant entitled to a rent reduction?

Background and Evidence

The parties agreed that an oral tenancy agreement exists and that monthly rent in the amount of \$600.00 is due on the first day of each month. The parties confirmed that the tenant paid a \$300.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid October 2016 rent	\$600.00
2. Unpaid November 2016 rent	\$600.00
3. Unpaid December 2016 rent	\$600.00
TOTAL	\$1,800.00

During the hearing, the tenant agreed that rent for October, November and December 2016 have not been paid. The tenant confirmed that he received the 10 Day Notice on October 12, 2016 dated October 12, 2016 and that the 10 Day Notice indicated that \$600.00 in unpaid rent was due on October 1, 2016. The tenant disputed the 10 Day Notice on October 17, 2016 however has confirmed that he has not paid rent as claimed by the landlord. The effective vacancy date listed on the 10 Day Notice is October 22, 2016 which has already passed. The tenant continues to occupy the rental unit.

Analysis

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

10 Day Notice – Firstly, based on the tenant confirming that he has failed to pay October, November and December 2016 rent of \$600.00 for each of those three months, **I dismiss** the tenant's Application in full due to insufficient evidence. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit without paying rent. I find the tenancy ended on October 22, 2016.

Unpaid rent and loss of rent - 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 oral tenancy agreement which the parties agreed required that rent is due monthly on the first of each month. The tenant continues to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,800.00** as claimed for unpaid rent and loss of rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,900.00** comprised of \$1,800 owing for unpaid rent and loss of rent plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to section 72 of the *Act*, I **authorize** the landlord to retain the tenant's full security deposit of \$300.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,600.00**.

Conclusion

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

The landlord's application is successful. The landlord has 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 landlord has established a total monetary claim of \$1,900.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$300.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,600.00. 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.

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 9, 2016

Residential Tenancy Branch