



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF CNR OLC PSF RPP LRE

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlords to return the tenant’s personal property pursuant to section 65;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords applied for:

- an Order of Possession for unpaid rent and / or utilities pursuant to section 55, and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with copies of each other's Applications and evidence.

The landlords testified that the 10 Day Notice to End Tenancy for Unpaid Rent ('10 Day Notice'), with an effective date of November 21, 2016, was personally served to the tenant on November 11, 2016. The landlords entered into written evidence a copy of that Notice and proof of service. The tenant indicated during the hearing that he received the 10 Day Notice as stated by the landlords. Accordingly, I find that the 10 Day Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are either of the parties entitled to recover their filing fees from one another?

Are orders required for the landlords to comply with the *Act* and regulation?

Are orders required for the landlords to return the tenant's personal property, and for the landlords to provide services or facilities are required by the law?

Is an order required to suspend or set conditions on the landlords' right to enter the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant and landlords' applications and my findings around each are set out below.

This month-to-month tenancy began in June 2016. A security deposit of \$1,050.00 was paid by the tenant and the landlords continue to retain this deposit. It was brought up during the hearing that both parties were before the RTB on September 21, 2016 in regards to an application made by the landlords for an Order of Possession for unpaid rent. The application was dismissed as the tenant had paid the outstanding rent within five days of receiving the 10 Day Notice. In that decision the arbitrator noted that rent

was \$2,100.00 per month, although since that hearing the two parties have agreed that rent is now set at \$1,800.00 per month. The tenant testified that the landlords have been extremely flexible and friendly as to when the rent is paid, and he was told that rent could be paid “on or about the first day of the month”. The landlords testified that rent was due on the first day of the month. There is no written tenancy agreement.

The landlords issued a new 10 Day Notice on November 11, 2016 for \$3,700.00 in unpaid rent and \$26.36 in unpaid utilities that was due on or before November 8, 2016. The landlords provided a monetary worksheet in their application requesting a Monetary Order for \$4,900.00, plus an additional \$100.00 for recovery of the filing fee, as outlined in the table below. During the hearing the landlords testified that \$1,300.00 was owed for October 2016, and monthly rent in the amount of \$1,800.00 was owed for November and December 2016. The landlords indicated that the tenant paid \$700.00 in December 2016 for use and occupancy only, reducing the outstanding rent to \$4,200.00.

Item	Amount
Unpaid Rent for October 2016	\$1,300.00
Unpaid Rent for November 2016	1,800.00
Unpaid Rent for December 2016	1,800.00
Less payment made in December 2016 (for use and occupancy only)	-700.00
Outstanding Rent	\$4,200.00

The landlords disputed the tenant’s testimony about when the rent was due, stating rent was due on the first day of the month. The landlords testified that monthly rent was set at \$1,800.00 per month, and an email was sent to the tenant clarifying the terms of this tenancy. The landlords submitted, in their evidence, an email dated September 30, 2016 showing correspondence between the landlords and the tenants discussing the monthly rent, and what was owed.

The email from the landlords to the tenant stated the following:

... You were suggested us to \$1,800.00/month utilities included. My husband didn't agree with that suggestions. Now he let me decide everything and deal with you. I agree with that suggestion We could go to the agreement: The rent will be \$1,800.00/month including utilities. It will be effective in August and after August. The rent \$1800.00 will

be collected by etransfer on the 1st of the month (month to month). As your email you will pay 7 October (Friday). You will pay me the rent of August \$1,800.00 plus +\$1,800.00 of September. Total it is \$3,600.00. Right now I only need the payment of August and September \$3,600.00. After receiving your payment. The rent of October I could give you more time for paying me if you needed. Please just email me and let me know if you needed. ..

The tenant continues to reside at the unit, although the landlords testified that the tenant has only paid a portion of the outstanding rent after the 10 Day Notice was issued.

Although the tenant does not dispute the fact that he owed the landlords, he disputes the amount that was owed. He testified that it was not clear as to what the monthly rent was, and he believed that October 2016 was paid in full. He believed the only rent owing was for November and December, 2016, which was \$1,800.00 per month for an outstanding balance of \$3,600.00, and not \$4,200.00.

The tenant indicated during the hearing that he was withdrawing his application for the return of his goods, which comprised of a ladder and a hose. The tenant submitted in his evidence that he noticed his garden hose was missing some time in August, and believed that the landlords had obviously taken it as the landlords "had also taken their own garden hose". The tenant testified that he saw the landlords take his folding ladder and put it in his van, which was witnessed by his daughter's friend. The daughter's friend was not called as a witness in this hearing. The tenant withdrew this part of his application, for the return of his hose and ladder, and as such I will not address this issue further.

The tenant also testified that the landlords had harassed and terrorized him, and that inspection notices were issued for the purposes of harassment. He said no details were provided for these inspections and he was simply told that the landlords wanted to inspect the dryer, which he was denied the use of.

The tenant testified that the landlords did not indicate that the laundry was a shared one, and was expecting a different arrangement. The tenant also testified that no functional dishwasher was provided to him, which the tenant said was advertised as included. The tenant also testified that storage in the garage was to be provided as per the advertisement, but the landlords had removed his stuff from storage without his permission, and changed the locks.

He testified that he was forced to call the police due to the landlords' threatening behaviour towards him. The landlords replied that there were no police reports or

witnesses to substantiate the tenant's claims. The tenant replied that he was still waiting for the police reports, but was requesting orders for the landlords to comply with the *Act*, to provide services or facilities as required by the tenancy agreement and / or *Act*, and to suspend or set conditions on the landlords' right to enter the rental unit.

Analysis

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

Based on the testimony of the landlords and the tenant and the supporting documents respecting matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the landlords' 10 Day Notice complies with section 52 of the *Act*.

The tenant did not dispute the fact that he failed to pay all of the outstanding rent that was then owing within five days of being deemed to have received the 10 Day Notice. The tenant did, however, make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. As the tenant had confirmed during the hearing that a portion of the rent has not been paid to the landlords and he does not have a right *under the Act* to deduct or withhold rent, I am not allowing the tenant's application to cancel the landlords' 10 Day Notice. Accordingly the landlords' application for an Order of Possession is allowed. As of November 21, 2016, the date indicated on the 10 day Notice, the tenancy has come to an end.

As to the application for a monetary order, the tenant does not dispute that he owes \$1,800.00 rent for each of the months of November and December 2016. The landlords testified that \$600.00 remains outstanding for the month of October 2016, although the tenant believes that October rent was paid in full.

I have reviewed the substantial evidence packages from both parties, and I note that the agreement was that all payments were to be made by e-transfer. I also note that despite all the evidence submitted by the tenant, no proof of payment was provided to show that October 2016 was paid in full. I, therefore, accept the landlords' evidence that only \$700.00 was paid in December 2016, after the 10 Day Notice was issued, which reduced the outstanding rent from \$1,300.00 to \$600.00 for October 2016 rent. The

landlords' monetary claim for unpaid rent in the amount of \$4,200.00 is therefore granted.

The landlords continue to hold the tenant's security deposit of \$1,050.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit of \$1,050.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

The tenant withdrew his application for the return of his property. Accordingly I note that this part of his application is withdrawn. The tenant had also applied for orders for the landlords to comply with the *Act*, regulation, or tenancy agreement; to provide services as required by the *Act* or tenancy agreement; and an order to suspend or set conditions on the landlords' access to the rental unit.

The tenant submitted that there was a discrepancy between what services were advertised and what was provided. The tenant did not submit in his evidence a copy of the advertisement, nor is there any written tenancy agreement indicating what both parties agreed to as part of this tenancy. As there is no way of verifying the discrepancies that the tenant described and this tenancy is ending shortly, I am not allowing the tenant's application for an order requiring the landlords to provide these services or facilities.

The tenant also requested an order suspending or setting conditions on the landlords' rights to enter the rental unit, and for the landlords to comply with the *Act*. The tenant testified that the landlords acted in a threatening manner towards him, and believed the landlords to be dangerous. The landlords disputed these allegations saying there were no police reports or witness testimony to substantiate these claims. In the absence of any witness testimony, I have to rely solely on the testimony of both parties. As the landlords disputes the tenant's allegations, I find that the tenant has not met the burden of proof to support these allegations. Accordingly I am dismissing this part of the tenant's application, again noting that this tenancy is ending shortly.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee. The tenant's application to recover his filing fee is dismissed.

Conclusion

I find that the landlords' 10 Day Notice is valid and effective as of November 21, 2016. The tenant's application to cancel the 10 Day Notice is dismissed. I grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant withdrew his application for the return of his personal property. As the tenant had not met the burden of proof to support the remainder of his applications, they are dismissed in their entirety.

I order the landlords to retain the tenant's security deposit of \$1,050.00 in partial satisfaction of the monetary claim.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee. The tenant's application to recover his filing fee is dismissed.

I issue a \$3,250.00 monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent plus the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for October 2016	\$1,300.00
Unpaid Rent for November 2016	1,800.00
Unpaid Rent for December 2016	1,800.00
Less payment made in December 2016	-700.00
Less Security Deposit	-1,050.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,250.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 30, 2017

Residential Tenancy Branch