



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR MNR MNDC FF
Tenant: CNR ERP MNDC RP RR

Introduction

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

The Landlord's Application was received at the Residential Tenancy Branch on February 14, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants' Application is dated February 7, 2017 (the “Tenants' Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord make repairs to the rental unit;
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Landlord was represented at the hearing by D.M. and R.H. The Tenants were represented at the hearing by S.J. and M.T. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, D.M. testified the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants by registered mail on February 16, 2017. A Canada Post registered mail receipt was provided in support, and the Tenants acknowledged receipt of these documents. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord's Application package is deemed to have been received by the Tenants on February 21, 2017.

In addition, D.M. testified that a further documentary evidence package was served on the Tenants, in person, on February 20, 2017. On behalf of the Tenants, S.J. acknowledged receipt of the documentary evidence. I find the Landlord's additional documentary evidence package was received by the Tenants on February 20, 2017.

On behalf of the Tenants, S.J. testified that the Tenants' Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord, in person, on February 10, 2017. The Landlord acknowledged receipt. I find the Landlord was served with the Tenants' Application package on February 10, 2017.

The parties were represented at the hearing and were prepared to proceed. Neither party raised any issues with respect to service or receipt of the above documents. 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.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to be determined in these Applications is whether or not rent has been paid when due and whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Landlord's application for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and for recovery of the filing fee. The Landlord has leave to reapply for the remainder of the relief sought at a later date.

Similarly, only the Tenant's application to cancel a notice to end tenancy for unpaid rent or utilities and to recover the filing fee will be considered in this Decision. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date.

In addition, the Tenants' Application named S.J. and M.T. as tenants. However, during the hearing, S.J. described M.T. as an occupant of the rental unit. As the Landlord's Application and the written tenancy agreement list S.J. and J.J. as tenants, in light of the oral testimony provided by S.J., and pursuant to section 64 of the *Act*, I have amended the Tenants' Application to include only S.J. and J.J. as the Tenants, which is also reflected in the style of cause.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the written tenancy agreement between the parties into evidence. It confirmed a fixed-term tenancy for the period from August 1, 2016 to July 31, 2017. During this time, rent in the amount of \$3,300.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,650.00 and a pet damage deposit of \$1,650.00.

On behalf of the Landlord, D.M. testified that the Tenants did not pay rent when due on February 1, 2017. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2017 (the "10 Day Notice"). D.M. advised the 10 Day Notice was served on the Tenants in person on February 2, 2017. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence, along with a Proof of Service form. The Tenants acknowledged receipt on that date.

In addition, D.M. testified that rent was not received when due on March 1, 2017, but that a payment of \$3,300.00 was made on March 3, 2017. D.M. advised that rent in the amount of \$3,300.00 remains outstanding.

In reply, M.T. acknowledged that rent in the amount of \$3,300.00 has been withheld. He testified that this was because the Landlord did not do a number of things agreed upon at the beginning of the tenancy, and also suggested the Tenants have not been able to collect rent from one of the occupants as a result of the Landlord's breach.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, D.M. testified, and S.J. and M.T. acknowledged, that rent in the amount of \$3,300.00 has not been paid. Although the Tenants submitted that rent was withheld because the Landlord did not satisfy obligations under the tenancy agreement, there is insufficient evidence before me to conclude the Tenants had a right to withhold rent. Section 26 of the *Act* confirms that rent is to be paid when due, whether or not the landlord complies with the *Act*, the Regulations or a tenancy agreement. As the Tenants have not paid rent when due, I grant the Landlord an order of possession, which will be effective two (2) days after it is served on the Tenants.

Further, I am satisfied on the evidence before me that rent in the amount of \$3,300.00 remains outstanding and I grant the Landlord a monetary award in this amount. In addition, having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application.

Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$3,400.00, which consists of outstanding rent of \$3,300.00 and recovery of the \$100.00 filing fee paid to make the Landlord's Application.

Subject to the exercise of my discretion described under *Preliminary and Procedural Matters*, above, the Tenants' Application is dismissed.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,400.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Subject to the exercise of my discretion described under *Preliminary and Procedural Matters*, above, 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: March 8, 2017

Residential Tenancy Branch