



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF MT RR MNDC MNR MNSD OPR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenants seek:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- a return of the filing fee pursuant to section 72.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed for loss under the *Act* pursuant to section 67;
- to withhold the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants were represented at the hearing by tenant O.G. (the “tenant”).

The landlord explained that the 10 Day Notice for Unpaid Rent was posted on the tenants' front door on February 23, 2017. The tenant acknowledged receipt of this notice but could not recall the exact date. The tenant is therefore deemed pursuant to section 90 of the *Act* to have been served with the 10 Day Notice on February 26, 2017.

The landlord stated that she sent her landlord's application for dispute resolution (“application for dispute”) and evidentiary package by way of Registered Mail to tenant, O.G. on March 16, 2017. A copy of the Canada Post tracking number and receipt were submitted to the hearing as part of the landlord's evidentiary package.

The tenant stated that she never received these packages. She did acknowledge that a Canada Post notice had been placed on her door. She said that it contained the incorrect spelling of her

name and therefore did not attend the post office to collect its contents. Pursuant to section 89(1) and (2) and section 90 of the *Act* tenant O.G. is deemed to have been served with the application for dispute on March 21, 2017.

As the landlord did not send a copy of the application for dispute to Respondent PP, I find that Respondent PP was not served with notice of this hearing in accordance with the *Act*.

The tenant stated that she sent her application for dispute resolution along with her evidentiary package by way of Registered Mail. The landlord acknowledged receipt of these packages "in early March." I find that the landlord was duly served with the tenants' evidentiary and ADR packages in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Can the tenants cancel the Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

If the tenancy is to continue, can the tenants reduce the rent?

Is the landlord entitled to a Monetary Order?

Can the landlord withhold the security deposit?

Are either party entitled to a return of their filing fee?

Background and Evidence

An examination of the tenancy agreement showed that this was a fixed-term tenancy that began on October 1, 2016 and was scheduled to end on September 20, 2017. Rent was \$1,700.00 per month and a security deposit of \$850.00 continues to be held by the landlord.

The landlord stated that she issued a 10 Day Notice because rent of \$1,700.00 was unpaid for the month of February 2017. In addition to an Order of Possession, the landlord sought a Monetary Order of \$5,856.00. This reflects the amount due for unpaid rent during this month, along with unpaid utilities for November 2016 to February 2017.

Item	Amount
Unpaid Rent for February	\$1,700.00
Unpaid Rent for March	1,700.00
Unpaid Rent for April	1,700.00
Unpaid Utilities November 2016 to February 2017	756.00
Total	\$5,856.00

During the course of the hearing, the tenant acknowledged not paying rent for this time period. She, along with her witness, M.P.J., contended that the unit was "not a safe house" and had many issues including faulty power and a door that required repair. Furthermore, she explained

that she never received any utility bills. She continued by noting that there were numerous issues with the electricity that should have been addressed by the landlord.

The landlord challenged the tenant's assertion that the utility bills were not provided to her. During the course of her testimony, the landlord produced the email address to which she sent the utility bills. The tenant confirmed that the landlord had correctly identified her email address but contended that she never received them.

Analysis – Order of Possession

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that the tenants continue to owe \$5,100.00 for unpaid rent for February, March and April 2017. The tenant acknowledged under oath that they did not pay rent on the day on which it was due. The landlord was unable to confirm exactly on which day they received the tenant's application for dispute resolution. The landlord was only able to report they received the tenant's application "in early March." The tenant's application was received by the Residential Tenancy Branch on March 3, 2017. If the tenant was deemed served with the 10 Day Notice on February 26, 2017, she had until March 3, 2017 to dispute the landlord's 10 Day Notice. She was therefore within the statutory timeline to dispute the 10 Day Notice under section 46 of the *Act*.

The tenant spent a great deal of time presenting evidence as to reasons why rent was not paid and sought to explain that the condition of the house was so poor that she should not be required to pay rent.

I direct the tenant's attention to section 26 of the *Act* that notes:

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.

A tenant must pay all of the rent when it's due. However, as one will find on the publicly accessible *Government of British Columbia's Residential Tenancy* website, there are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

I find that the tenant has failed to demonstrate that any of these five situations are present in this tenancy. The tenant had not received an arbitrator's decision allowing a deduction in rent, nor had the tenant received the landlord's written permission allowing a rent reduction. None of the other situations identified above are relevant to the circumstance of this tenancy. I find that

insufficient evidence was presented at the hearing to demonstrate that the landlord had violated the *Act*. I find that the tenant had no recourse to withhold rent. As the amount of rent identified as owing in the 10 Day Notice was not paid in full when it was due, the landlord's 10 Day Notice stands. The effective date of the 10 Day Notice is March 4, 2017. Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord provided testimony and written evidence to the hearing, demonstrating that rent was not paid for February, March and April 2017. The tenant acknowledged not paying rent for this time period and in accordance with sections 7(1) and 67 of the *Act* is responsible for reimbursing the landlord for her loss of rent.

During the hearing, the tenant acknowledged that the email address to which the landlord had sent the utility bills was in fact the correct email address. Despite this, the tenant denied ever receiving any utility bills. In addition she provided testimony that the apartment suffered periodic losses of power.

The Residential Tenancy Agreement signed by both parties and entered into the hearing as part of the landlord's evidentiary package states that the tenant is responsible for 50% of the electricity and heat. The tenant is therefore responsible for the costs associated with these bills. During the hearing, the tenant provided much testimony with regard to the issues she had surrounding the inconsistent electricity. I found this testimony to be compelling and believe that the landlord could have done more to address these issues. I will therefore find that the tenants are not responsible for the payment of any electrical bills associated with the tenancy. The tenants can deduct the \$280.73 electrical bill submitted into evidence by the landlord, from the \$756.00 being asked of them in the landlord's Monetary Order.

I find that the landlord is entitled to a monetary award of \$5,575.27 for unpaid rent and unpaid hydro.

The landlord's application also seeks to retain the security deposit for this tenancy. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$850.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in her application, she is entitled to recover the \$100.00 filing fee from the tenants pursuant to section 72 of the *Act*

Analysis – Tenants’ Application for Rent Reduction

The tenant has made an application for a reduction in rent pursuant to section 65 of the *Act*. The tenant and her witness presented testimony during the hearing that they were seeking a reduction in rent due to the poor quality of the rental unit, as well as poor electrical connections. In addition, the tenant testified that cash has gone missing from the rental unit and she suspects that someone entered the rental suite using a key to their laundry room.

Section 65(c)(i)&(ii) explains that if an arbitrator finds that a landlord has not complied with the *Act*, the regulations or a tenancy agreement, the arbitrator may make an order that money paid for rent be repaid to the tenant or deducted from rent.

I find the fact that the tenant opted to remain in the premises, despite its alleged poor quality is not supportive of her claim to a rent reduction. Furthermore, no rent has been paid by the tenant for three months due to these perceived shortcomings with the property. As mentioned previously in this decision, there were other recourses that the tenant could have taken if the landlord refused to do necessary repairs. She did not pursue these and chose simply not to pay rent. I found that because of the issues that the tenant described as having resulted from the inconsistent power she was not responsible for the electrical bill from November through April 2017. She has effectively received a reduction in payments that would otherwise have been added to the existing monthly rent and Monetary Order. For these reasons, I dismiss the tenant’s application for a rent reduction without leave to reapply. As the landlord is being issued an Order of Possession effective 2 days after service, any matters concerning reductions of future rent are moot.

Conclusion

I dismiss the tenants’ application to cancel the landlord’s 10 Day Notice without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective 2 days after service. Should the tenants fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to section 67 of the *Act* for \$4,725.27 in favour of the landlord as follows:

Item	Amount
Unpaid rent for February 2017	\$1,700.00
Unpaid rent for March 2017	1,700.00
Unpaid rent for April 2017	1,700.00
Recovery of Filing Fee	100.00
Recover of Heating utility ONLY	475.27
Less Security Deposit	(-\$850.00)

Total Monetary Award	\$4,725.27

The landlord is provided with formal Orders in the above terms. Should tenant O.G., fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I dismiss the remainder of the tenants' application without leave to reapply.

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: April 18, 2017

Residential Tenancy Branch