



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, OLC, PSF, LRE, RR, FF

Introduction

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

The tenant seeks:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord seeks:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed there were no issues with service of the 10 Day Notice the respective applications for dispute resolution and evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, their respective applications for dispute resolution and respective evidentiary materials.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay the rent for April and that the total arrear including rent owing and utilities as of the date of the hearing is \$4,168.76. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due can be reasonably anticipated, I amend the landlord's Application to increase the landlord's monetary claim from \$2,842.50 to \$4,168.76.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent and utilities?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should conditions be set on the landlord's right to enter the rental unit?

Should the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began on August 1, 2016. The rental unit is the downstairs suite in a detached home. Another tenant occupies the upper unit in the rental building. The monthly rent is \$1,895.00 payable on the first of the month. The tenant pays a portion of the electricity bills for the rental building. The tenant pays 25% of the electricity bill for the rental building to the tenant in the other rental unit. A security deposit of \$950.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenant has not paid rent for March and April, 2017 and has not paid his portion of the electricity bill to the other tenant. The landlord said that

the total amount of rent and utilities owing as of the date of the hearing is \$4,168.76, the sum of \$3,790.00 rent arrear and \$378.86 for outstanding electricity bills.

The tenant agreed that the rent arrear for this tenancy is \$3,790.00. The tenant testified that he withheld rent in order to have the landlord attend to repairs to the rental unit. The tenant specifically mentioned that the smoke detectors in the rental unit are not working, that there is insufficient hot water in the rental building, and the absence of a pergola that was promised to the tenant at the start of the tenancy.

The tenant testified that he has an agreement with the other tenant to pay 25% of the electricity bills for the rental building. The tenant said that he pays the other tenant directly and the landlord is not a party to this arrangement. The landlord agreed that he is not a party to the agreement between the tenants regarding the payment of the monthly electricity but was concerned that he was ultimately responsible for the behaviour of the tenants.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on March 2, 2017, and applied for dispute resolution on March 4, 2017 within the five day limit under the *Act*.

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 testified that there is a rent arrear of \$3,790.00. The tenant confirmed that he has not paid rent for March or April, 2017. I accept the evidence of the parties that there is a rental arrear of \$3,790.00.

While I understand the tenant's frustrations with the landlord, pursuant to section 26(1) of the *Act* the tenant must pay rent when due even when there is a dispute with the landlord. I find that the tenant was not authorized under the *Act* to withhold the monthly rent. Consequently, I dismiss the tenant's application and find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have found this tenancy is coming to an end I find it unnecessary to make a finding on the balance of the tenant's application.

I accept the evidence of the parties that the rent owing as of the date of the hearing is \$3,790.00. I find that there is no obligation for the tenant to pay the utilities to the

landlord under the tenancy agreement. The arrangement made between the tenant and the other tenant to pay a portion of the electricity bills for the rental building is a matter between the two parties. It does not create any obligation on the landlord to collect the utility payments from the tenant. Therefore, while I find that the tenant owes \$3,790.00 for unpaid rent, I dismiss the landlord's claim for payment of \$378.86 for utilities.

I issue a monetary award in the landlord's favour for \$3,790.00 that includes the unpaid rent owing for March and April, 2017.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$950.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order of \$2,940.00 in the landlord's favour under the following terms:

Item	Amount
Rental Arrears for March 2017	\$1,895.00
Rental Arrears for April 2017	\$1,895.00
Less Security Deposit	-\$950.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,940.00

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: April 11, 2017

Residential Tenancy Branch