



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDC MNSD MNR OPR FF

Tenant: AS CNR ERP MNDC MT OLC PSF RP RR FF

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 dated May 4, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit;
- a monetary order for unpaid rent or utilities;
- an order of possession based on a 10 Day Notice for Unpaid Rent or Utilities, dated April 25, 2017 (the “10 Day Notice”); and
- an order granting recovery of the filing fee.

The Tenants' Application is dated May 13, 2017 (the “Tenants' Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order that the Tenant be permitted to assign or sublet because the Landlord's permission has been unreasonably withheld;
- an order cancelling the 10 Day Notice;
- an order that the Landlord complete emergency repairs
- a monetary order for money owed or compensation for damage or loss;
- an order granting more time to make an application for dispute resolution;
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;

- an order that the Landlord make repairs to the unit, site, or property;
- an order reducing rent for repairs, services, or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf, as did the above-referenced Tenants. T.E. provided oral testimony on behalf of all Tenants. All parties giving testimony provided a solemn affirmation.

The Landlord testified the Landlord's Application package was served on the Tenants on May 5, 2017. The Tenant acknowledged receipt. I find the Landlord's Application package was received by the Tenants on that date.

On behalf of the Tenants, T.E. testified the Tenant's Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt on May 24, 2017. I find the Tenants' Application package was received by the Landlord on that date.

No further issues were raised with respect to service or receipt of the above documents. The parties were provided with the opportunity to present 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 Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. There are a number of issues between the parties. However, the most important issue to address during this hearing was related to the payment of rent and the effectiveness of the 10 Day Notice. Accordingly, I find it appropriate to exercise my discretion to dismiss all of the Tenants' Application with the exception of the request for an order cancelling the 10 Day Notice. The severed items are not sufficiently related to the issue of the payment of rent. The Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Are the Tenants entitled to an order cancelling the 10 Day Notice?
6. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the tenancy agreement between the parties. It confirms the tenancy began as a fixed-term tenancy for the period from November 13, 2015 to May 15, 2016. Thereafter, the tenancy continued on a month-to-month basis. Currently, rent in the amount of \$4,900.00 per month is due on the 15th day of each month. The Tenant paid a security deposit of \$2,450.00 and a pet damage deposit of \$1,225.00. The Landlord holds both deposits.

The Landlord testified rent was not paid when due on April 15, 2017. Accordingly, he issued the 10 Day Notice. The Landlord testified the 10 Day Notice was served on the Tenant K.P., in person, on April 25, 2017. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence. The Landlord also testified rent was not paid when due on May 15, 2017, and that \$9,800.00 is currently outstanding.

The Landlord also sought to recover the \$100.00 filing fee, and asked that the security deposit and pet damage deposit be applied in partial satisfaction of the Landlord's claim.

In reply, T.E. acknowledged rent was not paid as alleged but suggested there were issues that were not being addressed by the Landlord. T.E. also suggested the Landlord was playing a game.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

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 a tenancy by issuing a notice to end tenancy for unpaid rent or utilities. On receipt of a notice to end tenancy for unpaid rent or utilities, a tenant has five days to either pay rent in full or dispute the notice. Failure to do so results in the conclusive presumption the tenant has accepted the end of the tenancy.

In this case, T.E. acknowledged rent was not paid when due on April 15 and May 15, 2017, leaving \$9,800.00 outstanding. Further, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenants on April 25, 2017. However, the Tenants did not pay rent within five days after receipt. I also note the Tenants did not dispute the 10 Day Notice until May 15, 2017, 20 days after it was received. As the Tenants did not pay rent in full or dispute the 10 Day Notice within five days after receipt, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

In addition, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$6,225.00, which has been calculated as follows:

Claim	Awarded
Unpaid rent (April 15 and May 15, 2017):	\$9,800.00
Filing fee:	\$100.00
LESS security and pet damage deposits:	(\$3,675.00)
TOTAL:	\$6,225.00

Conclusion

Subject to the exercise of my discretion under *Preliminary and Procedural Matters*, above, the Tenants' Application to cancel the 10 Day Notice is dismissed.

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 \$6,225.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 13, 2017

Residential Tenancy Branch