



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR CNR MNR MNDC RP RR OLC ERP FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage to the rental unit 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.

The tenants applied pursuant to the Act for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section; a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; an order that the landlord make (emergency) repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing (1 landlord and 2 tenants). All parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. On review of all the material submitted, both parties confirmed receipt of the other's evidentiary submissions for this hearing.

The landlord testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") by posting the notice on the rental unit door. The tenants acknowledged receipt of the 10 Day Notice. A copy of the 10 Day Notice was submitted as evidence for this hearing. Given the agreement of both parties regarding service of the 10 Day Notice, I find that the tenants were sufficiently served with the 10 Day Notice.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? Or Are the landlords entitled to an Order of Possession for Unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to an order that the landlord make repairs to the unit?

Are the tenants entitled to an order requiring the landlord to comply with the Act including to make repairs to the unit and to compensate the tenants by way of a rent reduction for repairs not provided?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began on May 15, 2017 as a month to month tenancy. Both parties agreed that there was no written tenancy agreement between the parties. The parties agreed that the tenants were not required to pay a security deposit. The rental amount of \$2000.00 was payable on the fifteenth of each month. The tenants provided undisputed testimony that they paid each month's rent in cash and that they were not provided with rent receipts.

On July 16, 2017, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants did not dispute that they failed to pay rent but provided an explanation: they felt entitled to reduce their rent by 50%, according to both tenants at this hearing. Both tenants testified that the landlord had not agreed to a rent reduction but had indicated she would consider a rent reduction after an inspection of the issues raised within the rental unit. The tenants both testified that they requested repairs May 18, 2017 (3 days after moving in to the rental unit). The repairs requested were repair or replacement of a washer and dryer as well as a request to address mold in the rental unit.

The tenants also testified that, when the restoration person sent by the landlord attended to the rental unit, tenant BH was angry and did not allow him in as the landlord had not provided notice prior to the restoration person's arrival. The tenant BH also testified that he was not willing to have the landlord or a repair person enter the rental unit without his presence. Therefore, Tenant BH requested that the contractors come after 5:30 pm.

The landlord acknowledged that she, on occasion, did not give sufficient notice under the Act to bring a contractor to the rental unit. She also agreed that she told the tenants they may be entitled to reduce rent for the repairs required to the unit. She testified that

she attempted to be very accommodating but that the tenants refused entry to the landlord and contractors on a variety of different dates, regardless of whether the landlord had provided notice or not. She listed a series of dates including but not limited to July 2, 3, 16, and 17 when she attempted to have someone attend to the rental unit for investigation and possible repairs.

The tenants testified that they are unable to do dishes at this point because there is counter damage in the unit that needs to be repaired. The tenants also testified that the floors need repair or replacement. The tenants also testified that the stove is not working properly.

Tenant KH made some submissions with respect to the payment and/or non-payment of the hydro bill. However, the landlord had not applied for compensation with respect to a hydro bill and therefore, I will not include these submissions in this decision. Tenant KH also acknowledged that there had not yet been an agreement to reduce their rent because of the need for repairs but that her and her co-tenant felt it was necessary to do so in the circumstances. She testified that she and her co-tenant had made requests for repairs immediately on move-in and, as of the date of this hearing, the requests had not been addressed.

The landlord testified that the tenants did not raise repair issues until she attended their rental unit to take monthly rent on June 15, 2017. She testified that she tried to collect rent and, at that moment, they verbally indicated that several repairs were necessary. Again, the landlord testified that she told the tenants she would address the repairs but that the rent was still required. She provided undisputed testimony that she provided a new washer and dryer in the rental unit when the tenants told her it did not work.

Analysis

I find that the tenants failed to pay the rent due June 15, 2017. The tenants continued to reside in the rental unit and, again, failed to pay the rent due on July 15, 2017. The tenants confirmed that they received a copy of the landlord's 10 Day Notice on July 16, 2017. The Notice to End Tenancy indicates that the tenants are required, within five days of receiving the 10 Day Notice to End Tenancy, to pay the unpaid rent in order to continue the tenancy or to apply for dispute resolution.

The tenants applied to cancel the Notice to End Tenancy pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. **Section 26(1) of the Act establishes that “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.” In this case, the tenants had no right to deduct a portion of their rent. The tenants were not entitled to withhold their rent entirely as they chose to do. The need for repairs does not constitute grounds to withhold rent. I find that the tenants failed to pay rent in accordance with their tenancy agreement and the *Residential Tenancy Act*.

As the tenants have not vacated the rental unit despite failing to pay rent for the months of June 2017 and July 2017, I find that the landlord is entitled to a 2 day Order of Possession. I also find that the landlord is entitled to receive an amount for unpaid rent in June and July 2017 in the amount of \$4000.00. The landlord provided undisputed testimony that, as of the date of this hearing, the tenants had not paid \$2000.00 for August 2017 rent (due August 15, 2017). Therefore, I find that the landlord is entitled to \$6000.00 from the tenants for unpaid rent.

Both parties agreed that the tenants did not pay any security deposit at the outset of this tenancy. Therefore, there is no return of security deposit to consider or apply towards the outstanding rental amount.

As well as applying to cancel the notice to end tenancy (which is dismissed), the tenants applied for an order that the landlord comply with the Act. At this hearing, the tenants provided further particulars with respect to the orders they sought. The tenants requested repairs to the rental unit. Since the tenancy will come to an end, I find that the tenants’ request for repairs is moot. Further, I find that none of the repairs raised in the tenants’ application for dispute resolution were emergency repairs.

The tenants sought a rent reduction for the repairs that the landlord agreed upon but failed to provide. I find that the landlord did not agree that the repairs were required but made reasonable efforts to investigate the tenants’ claims that repairs were required. The landlord provided contractors on several occasions. On at least two occasions, the landlord provided contractors with advance notice. On other occasions, the landlord attempted to set up dates to provide contractors to investigate the issues for repair raised by the tenants. I have considered all of the evidence (photographic and testimonial) submitted by the tenants and I find that the tenants provided insufficient evidence to show that there was mold in the rental unit. Furthermore, I find that the landlord replaced the washer and dryer when requested to do so. I find there is insufficient evidence that other matters were raised in writing to the landlord.

I find that the tenants' evidence fails to provide sufficient evidence of repairs required, requested in writing by the tenants and that the landlord failed to repair. Therefore, based on my findings, I dismiss the tenants' application for a rental reduction or other monetary award. Finally, I dismiss the tenants' application to recover their filing fee for this application.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for June, July and August 2017 (\$2000.00 per month in rent x 3 months)	\$6000.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$6100.00

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

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: August 30, 2017

Residential Tenancy Branch