



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR MNR FF
Tenants: CNR MNDC ERP MT

Introduction

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

The Landlords’ Application for Dispute Resolution was made on November 7, 2017 (the “Landlords’ Application”). The Landlords 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; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on November 2, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 19, 2017 (the “10 Day Notice”);
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord reimburse the Tenants for emergency repairs made during the tenancy; and
- an order granting more time to make an application for dispute resolution.

The Landlords attended the hearing in person, as did the Tenants. All in attendance provided a solemn affirmation.

The Landlords testified the Landlords' Application package was served on the Tenants by registered mail on November 16, 2017. A Canada Post registered mail receipt was submitted in support. The Tenants denied having received the Application package, citing ongoing issues with their mailbox. However, pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlords' Application package is deemed to have been received by the Tenants on November 21, 2017.

The Tenants testified the Landlord was served with the Tenants' Application package in person on or about November 9, 2017. The Landlord acknowledged receipt of the Tenants' Notice of a Dispute Resolution Proceeding, but testified she did not receive the Tenants' documentary evidence, which consisted of an unsigned tenancy agreement. Although the Landlords claimed they did not receive the Tenants' version of the tenancy agreement, which differed from the agreement submitted by the Landlords, I find there is no prejudice to the Landlords in proceeding with both Applications.

No further issues were raised with respect to service or receipt of the above documents during the hearing. 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

The parties were advised that Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlords' Application to end the tenancy based on the 10 Day Notice and their monetary claim for unpaid rent, and the Tenants' Application to cancel the 10 Day Notice. 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 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 the 10 Day Notice?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the fixed-term tenancy began on September 2, 2017, and was to end on August 31, 2018. Rent in the amount of \$850.00 per month is due on the first day of each month. The agreement confirms the Tenants paid a security deposit of \$425.00, which the Landlords hold.

However, the Tenants submitted a copy of an unsigned tenancy agreement. The agreement indicated that rent in the amount of \$850.00 per month is due on the 21st day of each month. Accordingly, the Tenants submitted that the 10 Day Notice was issued prematurely. There are other differences between the agreements that do not impact this Decision.

The Landlords testified the Tenants did not pay rent when due on October 1, 2017. Accordingly, the Landlords issued the 10 Day Notice, which was served on the Tenants in person on October 19, 2017. T.D. testified that both Tenants were present when the 10 Day Notice was served. At that time, rent in the amount of \$850.00 was unpaid.

The Landlords also testified the Tenants did not pay rent when due on November 1 and December 1, 2017, and on January 1, 2018. Currently, rent in the amount of \$3,400.00 remains outstanding (\$850.00 x 4).

In reply, the Tenants testified that the unsigned tenancy agreement they submitted was the version they received from the Landlords. The Tenants did not recall signing another agreement. However, D.H. acknowledged that rent was not paid as alleged. He testified that the parties had entered into a verbal agreement whereby D.H. would perform work for the Landlord. According to D.H., he was paid in cash and in rent abatement to January 31, 2018.

The Landlords denied there was an agreement with respect to rent as claimed by D.H. On behalf of the Landlords, T.D. acknowledged the Tenant was asked to do some work. However, she testified the Landlords were invoiced for the work and paid D.H. in cash. The Landlords submitted a copy of the invoice and the receipt for payment with their documentary evidence.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the 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 for unpaid rent or utilities. A tenant has five days after receipt of a notice to end tenancy for unpaid rent or utilities to either pay rent in full or dispute the notice by filing an application for dispute resolution.

In this case, the Landlords testified, and I find, that the 10 Day Notice was served on the Tenants in person on October 19, 2017. Pursuant to section 46 of the *Act*, the Tenants had five days – until October 24, 2017 – to pay rent in full or dispute the 10 Day Notice. Although the Tenants did dispute the 10 Day Notice, the Tenants' Application was not made until November 2, 2017. Accordingly, the Tenants were out of time to make the Tenants' Application. Although the Tenants applied for more time to make an application for dispute resolution, the Tenants provided insufficient evidence to permit me to conclude the Tenants were entitled to more time. I also note the Tenants' Application was made after the effective date of the 10 Day Notice. Accordingly, pursuant to section 46 of the *Act*, I find the Tenants are conclusively presumed to have accepted the end of the tenancy. The Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

To address the Tenants' allegation that rent was not due until October 21, 2017, and that the 10 Day Notice was issued prematurely, I note the tenancy agreement relied upon by the Tenants was not signed by the parties. Further, on close examination, the date rent is due appears to have been altered. Accordingly, I find I prefer the tenancy agreement submitted into evidence by the Landlord and conclude, in all the circumstances, that it is more likely than not that rent was due on the first day of each month, as indicated in the tenancy agreement submitted by the Landlords.

In addition, D.H. acknowledged rent was not paid as claimed by the Landlords. Rather, he submitted they were not obligated to pay rent to January 31, 2018, pursuant to a verbal agreement between the parties. However, I find there is insufficient evidence of an agreement as alleged by D.H. Rather, I prefer the evidence of the Landlord, which included a copy of an invoice submitted to them by D.H. and paid for in cash.

In light of the above, I find that the Tenants did not pay rent when due as alleged and that rent in the amount of \$3,400.00 is outstanding. In accordance with section 67 of the *Act*, I find the Landlords have demonstrated an entitlement to a monetary award of \$3,400.00 for unpaid rent and \$100.00 in recovery of the filing fee. Further, I order that the security deposit held by the Landlords be applied to the amount

owing. The Landlords are therefore entitled to a monetary order in the amount of \$3,075.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$3,400.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$425.00)
TOTAL:	\$3,075.00

Subject to the exercise of my discretion referred to under Preliminary and Procedural Matters, above, the Tenants Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

Conclusion

Subject to the exercise of my discretion described under *Preliminary and Procedural Matters*, above, the Tenants' Application is dismissed, without leave to reapply.

The Landlords are 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 Landlords are granted a monetary order in the amount of \$3,075.00. 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: January 18, 2018

Residential Tenancy Branch