



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: CNR MNR MNDC OLC LRE FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“*Act*”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017 (“10 Day Notice”), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to suspend or set conditions on the landlord’s right to enter the rental unit, for a monetary order for the cost of emergency repairs, for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and tenant C.D. (“tenant”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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 confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2017 (“10 Day Notice”) which is why the parties had their hearing scheduled on an urgent basis, as hearings are scheduled on a priority basis for orders of possession, emergency repairs and health and safety issues. I find that not all the claims on the tenants’ application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 10 Day Notice and the tenants’ application to recover the filing fee at this proceeding. The balance of the tenants’ application is **dismissed, with leave to re-apply**.

I note that while the tenant verbally disagreed with my decision to sever her monetary claim in a disrespectful manner. While the tenant stated she amended her application to a monetary claim only, I find that such an amendment does not change the fact that the landlord had applied for an order of possession and that the tenant had applied to cancel the 10 Day Notice which the reason why the parties were granted an expedited hearing. I also find that amending an application after the fact to a monetary claim is an attempt to expedite a monetary claim which I do not permit and as a result, I exercise my discretion under the *Act* to sever the tenant’s monetary claim only under Rule 2.3 as indicated above. The landlord’s monetary claim; however, is directly related to the 10 Day Notice which is why I have considered the landlord’s directly related monetary claim.

During the hearing, the tenant was cautioned for repeated interruptions even though both parties were advised of the conduct expected during the hearing at the outset of the hearing. Eventually, the tenant disconnected the hearing after saying “fucking loser” to the arbitrator followed by a denial that she was directing that comment to the arbitrator which was quickly followed up by the tenant with the phrase “fuck off” before she disconnected from the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Should the 10 Day Notice be cancelled or upheld under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

At the outset of the hearing, the parties agreed that since the tenants' filed their application to cancel the 10 Day Notice, they tenants vacated the rental unit on December 14, 2017 by being forced out by the police due to a restraining order filed against the male tenant by the landlord. The tenant stated that the male tenant was unable to provide testimony during the hearing due to the restraining order against him which remains in effect as of the date of the hearing based on the tenant's testimony.

A copy of the tenancy agreement was submitted in evidence. The tenancy began on November 1, 2017. Monthly rent is listed as \$1,200.00 per month and is due on the first day of each month. The landlord testified that the tenants paid a security deposit of \$600.00 at the start of the tenancy which he continues to hold, but failed to pay the \$300.00 security deposit. The tenant claims that the tenants also paid the \$300.00 pet damage deposit however did not submit any documentary evidence to support that the payment had been made to the landlord.

Regarding the 10 Day Notice, the tenant confirmed that the 10 Day Notice dated December 2, 2017 was received on either December 6, 2017 or December 7, 2017 but could not confirm the specific date out of the two dates. The tenants applied to cancel the 10 Day Notice on December 8, 2017 which is within the 5 day timeline provided for under section 46 of the *Act*.

The landlord indicates on the 10 Day Notice that \$1,200.00 was owed as of December 1, 2017. The tenant claims that rent was paid on December 1, 2017 in cash to the landlord which the landlord vehemently denied. The tenant referred to a bank statement which did not include the name of the tenants and did not match the amount of \$1,200.00. The tenant claims that \$1,400.00 was withdrawn from her bank account on November 29, 2017 and that the landlord was given \$1,200.00 of that in cash. The landlord stated that even if the document was her bank statement, it does not prove that she gave the cash to the landlord and that had the tenants paid him, he would have

issued a receipt as required by the *Act* which he did not do because he was not paid and is why he issued the 10 Day Notice. The tenant stated that she did not get a receipt from the landlord. The effective date listed on the 10 Day Notice was December 17, 2017.

The landlord testified that the tenants paid the first month's rent was paid by e-transfer so why would the tenants suddenly pay in cash and not e-transfer the next month, then give cash without a receipt and that the tenants' version of events was just made up.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – The parties were advised based on the tenant's behaviour during the hearing and her inability to provide a specific date when she received the 10 Day Notice that I preferred the testimony of the landlord as the landlord's testimony was consistent throughout the hearing. Therefore, I do not find the tenant to be credible.

Therefore, I uphold the landlord's 10 Day Notice as I find the 10 Day Notice is valid and that based on the landlord's testimony that the tenant's owe \$1,200.00 for unpaid December 2017 rent. I find the tenancy ended on December 17, 2017 which was the effective vacancy date of the 10 Day Notice. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants in case the tenants attempt to occupy the rental unit.

Unpaid rent – Although the tenants denied owing any amount of rent as of the date of the hearing, and as mentioned above, I find the tenants' testimony to be vague and not credible. Based on the above, I find the tenants have breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) 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.

[My emphasis added]

I afford the tenant's statement of little weight as the tenant's name is not listed on the document and does not match the amount of rent owed. In addition, it does not explain why cash would be used after the month earlier the tenants paid rent by e-transfer where a receipt is issued to both parties. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,200.00** for unpaid rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I dismiss the tenants' application without leave to reapply due to insufficient evidence. I do not grant the filing fee as a result.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,300.00** comprised of \$1,200.00 in rent arrears plus the recovery of the cost of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$600.00 and find that no pet damage deposit was paid by the tenants, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$700.00**.

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above. This does not include the portion of the tenants' claim that was dismissed with leave to reapply as indicated above.

The landlord's application is successful. I find the tenancy ended on December 17, 2017. The landlord has been granted an order of possession effective two (2) days after service on the tenants in case the tenants attempt to reoccupy the rental unit. Should the landlord require enforcement of the order of possession, the tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$1,300.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$600.00 which has accrued no interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$700.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 8, 2018

Residential Tenancy Branch