



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR MNR FF
Tenant: CNR MNDC RP

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 for Dispute Resolution was made on January 23, 2018 (the “Landlord’s Application”). The Landlord 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 January 15, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord make repairs to the unit, site, or property.

The Landlord attended the hearing and was represented by A.W., legal counsel, who made submissions on behalf of the Landlord. The Tenants attended the hearing in person. The Landlord and the Tenants provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, A.W. advised that the Landlord's Application package and documentary evidence was served on the Tenants by leaving a copy at the door of the Tenants' rental unit. M.V. acknowledged receipt on behalf of the Tenants. On behalf of the Tenants, M.V. testified the Tenants' Application package and documentary evidence were served on the Landlord by regular mail. A.W. acknowledged receipt on behalf of the Landlord. No issues were raised by the parties with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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, the most pressing issue to address is related to the payment of rent. Therefore, I find it appropriate to exercise my discretion to sever the all but the Landlord's Application and Tenants' Application to cancel the notice to end tenancy for unpaid rent or utilities. The Tenants are granted leave to reapply for the monetary relief sought at a later date, as appropriate.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Are the Tenants 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. M.V. testified that the Tenants were provided with keys and moved into the rental unit on August 15, 2017. However, the tenancy agreement indicated, and the Landlord understood, that the tenancy began on September 1, 2017. The tenancy agreement and the parties also confirmed that rent in the amount of \$3,800.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,750.00, which is held by the Landlord. Although the tenancy agreement suggests otherwise, the parties agreed the Tenants did not pay a pet damage deposit.

The Landlord testified the Tenants did not pay rent in full when due on November 1 and December 1, 2017, and on January 1, 2018. A partial payment of \$1,000.00 was received by the Landlord on January 7, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 9, 2018 (the "10 Day Notice"). At that time, the total amount of rent outstanding was \$10,400.00. In the Tenants' Application, and during the hearing, the Tenants confirmed receipt of the 10 Day Notice on January 9, 2018. A copy of the 10 Day Notice was submitted into evidence by the Landlord.

Further, A.W. advised that rent was not paid when due on February 1 and March 1, 2018, bringing the total outstanding to \$18,000.00.

In reply, M.V. testified that the Tenants became unable to pay rent when her allergies were exacerbated and she developed pneumonia. She testified further that U.V. also lost income because he had to stay home to care for her. The Tenants also suggested that rent was not paid because they were waiting to receive employment insurance benefits. The Tenants submitted that vents in the rental property needed to be cleaned and that the furnace did not work in October and November 2017. On behalf of the Landlord, A.W. submitted that the Landlord had no knowledge of the alleged issues.

Analysis

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

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. In this case, the Tenants did not dispute that rent was not paid when due as claimed.

I find that rent was not paid when due and that \$18,000.00 is outstanding. I find the Landlord is entitled to a monetary award for unpaid rent and to recover the filing fee paid to make the

Landlord's Application. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$18,100.00, which is comprised of \$18,000.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Further, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

Subject to the exercise of my discretion under Rule of Procedure 2.3, described under *Preliminary and Procedural Matters*, above, the Tenants' Application is dismissed, without leave to reapply.

Conclusion

Subject to the exercise of my discretion under Rule of Procedure 2.3, described under *Preliminary and Procedural Matters*, above, the Tenants' Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$18,100.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

No order has been made with respect to the security deposit held by the Landlord. The parties are therefore cautioned to deal with the security deposit in accordance with section 38 of the Act.

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: March 13, 2018

Residential Tenancy Branch