



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR FF
	Tenant:	PSF OLC RP CNR 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 for Dispute Resolution was made on January 29, 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 Tenant’s Application for Dispute Resolution was made on January 22, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order that the Landlord comply with the *Act*, regulations and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;
- an order cancelling a notice to end tenancy for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing in person at the appointed date and time. The Tenant attended the hearing late, due to difficulty calling into the telephone conference hearing. Both parties provided a solemn affirmation.

The Landlord testified the Landlord's Application package was served on the Tenant, in person, within a few days after receiving the Notice of Dispute Resolution Proceeding package from the Residential Tenancy Branch. The Tenant testified the Tenant's Application package was served on the Landlord by leaving a copy in the Landlord's mailbox. Although not an approved method of service under the *Act*, the Landlord acknowledged receipt. During the hearing, neither party raised any issue with respect to service or receipt of the above documents. 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 and to which I was referred. 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 this case, the parties were advised I would be exercising my discretion to dismiss the Tenant's Application as it relates to the following:

- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order that the Landlord comply with the *Act*, regulations and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;

However, in light of my findings below, the above aspects of the Tenant's Application are dismissed, without leave to reapply.

In addition, the Landlord submitted an Amendment to an Application for Dispute Resolution, dated March 1, 2018 (the "Amendment"), seeking compensation for unpaid utilities. The Amendment was uploaded to the Residential Tenancy Branch service portal on March 19, 2018, two days before the hearing, contrary to Rule 4 of the Rules of Procedure. The Landlord was advised I would not consider the request for relief sought in the Amendment during this hearing, but that she would remain at liberty to apply for compensation for unpaid utilities at a future date.

Issues

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
5. Is the Tenant entitled to recover the filing fee?

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 1, 2017, and was expected to continue to August 31, 2018. The Landlord confirmed rent in the amount of \$2,600.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,300.00, which the Landlord holds.

The Landlord testified that rent was not paid when due on January 1, 2018, although the Landlord did receive a partial payment of \$1,200.00 on January 2, 2018, leaving \$1,400.00 outstanding. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 15, 2018 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenant, in person, on January 15, 2018. The Tenant's Application indicated the 10 Day Notice was received on January 16, 2018. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence.

Further, the Landlord testified that rent was not paid when due on February 1 and March 1, 2018. Currently, rent in the amount of \$6,600.00 is outstanding (\$1,400.00 + \$2,600.00 + \$2,600.00 = \$6,600.00).

In reply, the Tenant acknowledged rent has not been paid as claimed. However, he cited issues with the dishwasher, garburator, and heat. The Tenant also testified the Landlord has repeatedly entered the rental unit without notice.

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.

In this case, the Tenant acknowledged, and I find, that rent was not paid in full when due on January 1, 2018. Accordingly, the Landlord issued the 10 Day Notice, which I find was received by the Tenant on January 16, 2018. In addition, I find the Tenant did not pay rent when due on February 1 and March 1, 2018. Further, I find the issues cited by the Tenant do not provide him with a justification for withholding rent.

In light of the above, I find the Landlord is entitled to a monetary award in the amount of \$6,600.00 for unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. I order that the security deposit held be applied to the monetary award granted. Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,400.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,600.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,300.00)
TOTAL	\$5,400.00

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

The Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$5,400.00. 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 Tenant. The order may be filed in and enforced as an order of the Supreme 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: March 21, 2018

Residential Tenancy Branch