



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR MNDC MND FF
	Tenants:	CNR PSF OLC ERP 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 April 24, 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;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for damage to the unit, site or property; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on March 5, 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;
- an order that the Landlord 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 emergency repairs for health or safety reasons;
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing in person and provided affirmed testimony.

The Landlord testified the Landlord's Application package and documentary evidence was served on the Tenants in person with a witness present. The Tenants acknowledged receipt.

On behalf of the Tenants, K.S. testified the Tenants' Application package was served on the Landlord in person. The Landlord acknowledged receipt. K.S. testified that a further documentary evidence package was served on the Landlord in person on May 15, 2018. The Landlord confirmed receipt of the documentary evidence and confirmed he had an opportunity to review it.

No further 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 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 the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most pressing issue to address was related to the payment of rent and whether or not the tenancy will continue. Accordingly, at the outset of the hearing, I advised the parties that I would be exercising my discretion to sever those parts of the applications that did not relate to payment of rent or possession of the rental unit, with leave to reapply (Landlord: MND, MNDC; Tenants: PSF, OLC, ERP). However, in light of my findings below, the issues raised in the severed portions of the Tenants' Application are moot. Accordingly, the Tenants' Application has been dismissed in its entirety, without leave to reapply. The Landlord is granted leave to reapply for the remaining monetary relief sought at a later date.

Issues

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

Background and Evidence

The parties confirmed that the tenancy began on or about July 20, 2016. Rent in the amount of \$1,250.00 is due on or before the first day of each month. The Tenants paid a security deposit in the amount of \$625.00, which the Landlord holds.

The Landlord testified the Tenants did not pay rent when due. Accordingly, he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 9, 2018 (the "10 Day Notice"). A copy of the 10 Day Notice was submitted into evidence. Although the Tenants made some partial payments, \$5,000.00 remained outstanding at the time the 10 Day Notice was issued. The 10 Day Notice indicated that it was served on the Tenants in person on April 10, 2018; the Tenants' Application confirms receipt on that date. The Landlord testified that rent was also not paid when due on May 1, 2018, and that rent in the amount of \$6,250.00 is currently outstanding.

In reply, D.R. agreed that rent has not been paid in the amount claimed because he was having employment issues. However, the Tenants submitted they were justified in withholding rent payments. The parties agreed D.R. did some work for the Landlord to offset rent but that rent has not been paid in full.

In addition, K.S. testified that the Tenants withheld rent because the Landlord did not address their complaints about the tenant below. Specifically, K.S. testified that any small noise in the Tenants' rental unit, such as a child dropping a toy or walking, would result in loud music and noise from the tenant below that shook the Tenants' rental unit. On one occasion, a brunch party being held in the Tenants' rental unit had to be moved to another location because of the noise from the unit below. In addition, K.S. testified that the tenant below turned off power to the Tenants' rental unit. Although not raised in testimony, the Tenants' Application also suggested the tenant below kicked off their front door handle and threatened the Tenants. The Tenants' Application also included a statement questioning the legality of the rental units in the property. Finally, K.S.

submitted that the stress has resulted in health concerns for her. A long list of text messages between the parties and a note from the local hospital were submitted in support.

The Landlord testified that the power was shut off only once and that has taken repeated steps to help the parties resolve their issues, without success.

Analysis

Based on all of the above, the evidence and 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 Landlord testified that rent in the amount of \$6,250.00 is currently outstanding. The Tenants acknowledged rent was not paid when due and agreed with the amount claimed. However, they cited multiple issues with the tenants below, and the Landlord's failure to respond adequately as a reason for withholding rent. After careful consideration of the parties' evidence, I find that the reasons provided by the Tenants did not give the Tenants a right to withhold rent under the *Act*. If the Landlord failed to address issues between the Tenants and other occupants of the rental property, the Tenants had the option of submitting an application for dispute resolution seeking an order compelling the Landlord to take reasonable steps to address those issues. I note the Tenants did not submit an application for dispute resolution until after they were served with the 10 Day Notice.

I find that rent was not paid when due and that \$6,250.00 is outstanding. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, I find the Landlord is entitled to a monetary award in the amount of \$6,250.00 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. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,725.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,250.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$625.00)
TOTAL:	\$5,725.00

As the tenancy is ending for failing to pay rent when due, the Tenants' Application is dismissed in its entirety, without leave to reapply.

Conclusion

The Landlord is 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 Landlord is granted a monetary order in the amount of \$5,725.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' Application is dismissed in its entirety, without leave to reapply.

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: May 18, 2018

Residential Tenancy Branch