



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT MNDCT PSF OPU

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlords applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a cancellation of the landlords' notice to end tenancy pursuant to section 46 of the *Act*;
- an Order for the landlords to provide services or facilities pursuant to section 65 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both landlords and the tenant attended the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both of the tenant and the landlords acknowledged receipt of each other's applications for dispute resolution and evidentiary packages. I find that all parties were duly served with the other's applications and evidence.

Issue(s) to be Decided

Can the tenant cancel the landlords' notice to end tenancy? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Should the landlords be directed to provide services or facilities required by law?

Is either party entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony was provided to the hearing by the tenant that this tenancy began on November 9, 2017. Rent was \$1,100.00 per month, and a security deposit of \$500.00 paid at the outset of the tenancy continues to be held by the landlords.

The landlords explained that a 10 Day Notice for unpaid rent and utilities was served to the tenant on April 25, 2018. The tenant acknowledged receiving this notice. The landlords said that they served the tenant with this notice because rent had not been paid for February and March 2018, and utilities for the time period of February 13, 2018 to March 14, 2018 were also unpaid.

The tenant acknowledged not paying rent for two months but said that he had not paid rent for March and April 2018.

In addition to the landlords' application for an Order of Possession, and the tenant's application to cancel this Notice to End Tenancy, the tenant has applied for a monetary award of \$4,100.00 and an Order to provide services or facilities as required by law.

The tenant explained that he missed three weeks of work from March 29, 2018 to April 19, 2018 after falling ill. The tenant attributed this illness to a lack of hot water and heat in the rental unit. The tenant said that hot water, heat, and eventually electricity were all cut off from the property. The tenant said that his application for a monetary award reflected lost wages from his time away from work while he was sick, and for the inconvenience of being sick due to the landlords' actions.

The landlords disputed that any intentional act to cut off hydro, gas or electricity were done. The landlords said that the gas company inexplicably cut off services in

December 2017 after informing the landlords that they would be doing so in March 2018. The landlords explained that they contacted the utility provider and that the services were restored. The landlords said that they had no contact with the tenant for many weeks, that no rent had been paid and that their notices and messages urging the tenant to speak with them went unanswered. Following a continued lack of communication, the landlords said that they considered the rental unit abandoned and had the electricity cut off.

Analysis

I will begin by analyzing the 10 Day Notice to End Tenancy and then turn my attention to the tenant's application for a monetary award and to provide services as required by law.

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on April 25, 2018. The tenant acknowledged that rent for two months was unpaid. Section 26(1) of the *Act* states, "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."

The tenant's failure to pay rent as it was due has led to the tenancy on the effective date of the 10 Day Notice, in this case, May 8, 2018. As the tenant is still in occupation of the rental unit, I find that the landlord is entitled to an Order of Possession effective two days after it has been served on the tenant.

I now turn my attention to the tenant's application for a monetary award of \$4,100.00. The tenant said that he fell ill after having services to the rental unit cut off by the landlords. The tenant explained that he missed three weeks of work, and suffered generally as a result of the landlords' actions. Little evidence of the missed wages or illness were provided to the hearing as part of the tenant's evidentiary package. No pay stubs, letters from his employer or doctor demonstrated that the tenant missed work as a result of an illness, or that this illness was caused by the landlords' actions. I find that the tenant has failed to provide sufficient detail related to his application for a monetary award, showing that the landlords' purported actions caused him to fall ill and miss work. For these reasons, the tenant's application for a monetary award is dismissed.

As this tenancy is coming to an end by way of the 10 Day Notice to End Tenancy, the tenant's application for the landlords to provide services is dismissed.

Pursuant to section 72 of the *Act*, the landlords who were successful in their application, may withhold \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee. The tenant must bear the cost of his own filing fee.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords may withhold \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee.

The tenant's applications for a monetary award and for the landlords to provide services are dismissed.

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: June 27, 2018

Residential Tenancy Branch