



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNRLS MNDLS MNDCLS FFL
For the tenant: CNR OLC ERP LRE AS FFT

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 landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for a monetary order for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant’s security deposit towards money owing, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 11, 2018 (“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 emergency repairs for health or safety reasons, for authorization to sublet the rental unit, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing. The tenant did not attend the hearing although the tenant was provided with a copy of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) dated March 20, 2018 when the tenant filed their application. After the mandatory ten minute waiting period, the tenant’s application was **dismissed in full without leave to reapply** as the tenant failed to call into the teleconference to present the merits of their application and the landlords did call into the hearing and were prepared to proceed. I find the teleconference codes, date and time provided to both parties to be accurate and confirm that the only persons to call into the hearing were myself and the two landlords who called in with the same phone number which left only two parties on the line for the entire hearing according the teleconference system which I monitored throughout the hearing which lasted 27

minutes. Based on the above, I find the 10 Day Notice to be undisputed as the tenant did not attend the teleconference and the tenants' application was dismissed without leave to reapply as a result.

The hearing process was explained to the landlords, and the landlords were given an opportunity was given to ask questions about the hearing process. Thereafter the landlords 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.

The landlords affirmed that the tenant was served with their application, Notice of Hearing and documentary evidence personally at the rental unit address on March 24, 2018 between 7:00 p.m. and 8:00 p.m. approximately. The landlords affirmed that a witness, KH, was present to witness the personal service on the tenant. Based on the above, I am satisfied that the tenant was sufficiently served as required by the *Act*, and that the landlords' application is unopposed by the tenant as the tenant was served and did not attend the hearing to dispute the landlord's application.

Preliminary and Procedural Matters

The landlords email addresses were confirmed at the outset of the hearing. The tenant had provided their email address on their application and as a result, the decision will be emailed to the parties and the landlords will be provided with any applicable orders by email.

As the landlords testified that as of the date of the hearing the tenant continues to occupy the rental unit I find the landlords' claim for damages is premature as is their claim for June 2018 rent as the hearing was held this date on June 1, 2018 and the tenant would have until midnight this night to pay rent for June 2018. Therefore, I grant the landlords leave to reapply for damages to the rental unit, site or property and loss of June 2018, if applicable, as I have not considered those matters.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on November 1, 2017 and is scheduled to end on November 1, 2018. Monthly rent of \$2,400.00 is due on the first day of each month. The tenant paid a security deposit of \$1,200.00 which the landlords continue to hold.

A copy of the 10 Day Notice was submitted in evidence. The landlords stated that the 10 Day Notice was personally served on March 11, 2018. The amount owing indicates \$1,400.00 due March 1, 2018 and the landlords stated that since that date, the tenant has failed to pay \$2,400.00 for each of the following months including April and May 2018 and currently owes \$6,200.00 in unpaid rent and loss of rent. In addition, the landlords testified that the tenant owes \$509.00 for unpaid hydro/electricity bills, and \$110.00 for unpaid water bills. The landlords referred to the tenancy agreement which under section 5 confirms that heat, electricity and water are not included in the monthly rent.

Analysis

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

10 Day Notice – Firstly, I find the tenant failed to dispute the 10 Day Notice by failing to attend this hearing. Therefore, pursuant to section 46 of the *Act* I find the tenant is conclusively presumed under the *Act* to have accepted the effective vacancy date which automatically corrects to March 21, 2018 under section 53 of the *Act*. 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*, as I find the tenant would know or ought to have known that the tenancy ends 10 days after they were served with the 10 Day Notice as the \$1,400.00 amount was not paid within five days of March 11, 2018 or any time therefore, and taking into account that April and May 2018 rent have also not been paid since the 10 Day Notice was issued, I grant the landlords an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

Unpaid rent – Based on the above, I find the tenant has 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 accept the landlords' testimony that the tenant owes a total of **\$6,200.00** in unpaid rent and loss of rent as claimed for March, April and May 2018. I also find that the tenant owes **\$509.00** for the unpaid electricity bills and **\$110.00** for unpaid water bills. As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find the landlords have established a total monetary claim of **\$6,919.00.00** comprised of \$6,200.00 in rent arrears, \$619.00 in unpaid utilities, plus the recovery of the cost of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full security deposit of \$1,200.00 which has accrued no interest in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$5,719.00.**

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlords' application is successful. I note a portion of the landlords' application was dismissed with leave to reapply as indicated above as it was premature. I find the tenancy ended on March 21, 2018. The landlords have been granted an order of possession effective two (2) days after service on the tenant. The landlords must serve the tenant 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 landlords have established a total monetary claim of \$6,919.00 as described above. The landlords have been authorized to retain the tenant's full security deposit of \$1,200.00 which has accrued no interest, in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$5,719.00. This order must be served on the tenant 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: June 1, 2018

Residential Tenancy Branch