



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlords: OPR, OPL, MNRL, FFL

For the Tenants: CNR, CNL, DRI, ERP, LAT, LRE, MNDCT, MT,
OLC, PSF

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ application for dispute resolution was made on May 24, 2018 (the “Landlords’ Application”). The Landlord applied for the following relief pursuant to the Act:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent;
3. an order of possession for landlord’s use of property; and,
4. a monetary order for recovery of the filing fee.

The Tenants’ application for dispute resolution was made on May 16, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the Act:

1. an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
2. an order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property;
3. an order to dispute a rent increase;
4. an order for emergency repairs;
5. an order permitting the Tenants to change the locks;
6. an order restricting or suspending the Landlords’ right to enter the rental unit;
7. a monetary order for damage or compensation;
8. a request for more time to cancel a notice;

9. an order for the Landlords to comply with the Act, Regulation, and/or the tenancy agreement; and,
10. an order for the Landlords to provide services or facilities required by the tenancy agreement or by law.

The Tenant J.M., the Landlord B.K.S., and the Landlord's agent S.A. (the "Agent") attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that complies with the Act.

Preliminary Matter – Severing Unrelated Issues in the Tenants' Application

Rule 2.3 of the *Rules of Procedure* states that "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

The Tenants' application contains eight matters (numbers 3 through 10, listed in the Introduction, above) that I find are unrelated to the central issue to be decided, namely, will this tenancy continue?

I explained to the parties that I would be dismissing these unrelated claims on the Tenants' application, and I gave the parties an opportunity to make submissions. The parties did not.

As such, pursuant to Rule 2.3 of the *Rules of Procedure*, I dismiss the Tenants' application in respect of the following, without leave to reapply:

1. an order to dispute a rent increase;
2. an order for emergency repairs;
3. an order permitting the Tenants to change the locks;

4. an order restricting or suspending the Landlords' right to enter the rental unit;
5. a monetary order for damage or compensation;
6. a request for more time to cancel a notice;
7. an order for the Landlords to comply with the Act, Regulation, and/or the tenancy agreement; and,
8. an order for the Landlords to provide services or facilities required by the tenancy agreement or by law.

Preliminary Matter – Withdrawal of Landlord's Claim for an Order of Possession for Landlord's Use of Property

The parties confirmed that the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property was mutually withdrawn on June 19, 2017, and as such, I will not consider the Landlords' application for an order of possession for landlord's use of property, nor will I consider the Tenants' application for an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent?
2. Are the Landlords entitled to a monetary order for unpaid rent?
3. Are the Landlords entitled to a monetary order for the filing fee?
4. Are the Tenants entitled to an order to cancel the 10 Day Notice?

Background and Evidence

The Landlord and the Agent testified that the tenancy commenced May 10, 2017, and monthly rent is \$750.00. The Tenants paid a security deposit of \$375.00. The Tenants have not paid rent for May 2018 and June 2018. A copy of the written tenancy agreement was submitted into evidence.

The Landlords served the 10 Day Notice in-person on the Tenants on May 13, 2018. A copy of the 10 Day Notice was submitted into evidence.

The Tenant testified that he did not, and was not going to, pay rent because of excessive noise issues coming from upstairs in the house. The Tenant also testified that the Landlord illegally increased the rent to \$900.00, and that he was not going to pay the Landlord *any* rent. There was no evidence submitted regarding rent being \$900.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 26 of the Act requires that a tenant must pay rent when it is due under the 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. Pursuant to section 46 of the Act, the 10 Day Notice informed the Tenants that the 10 Day Notice would be cancelled if the rent was paid within five days of service. The 10 Day Notice also explains that the Tenants had five days from the date of service to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenants did not pay rent when it was due, and have not paid rent for May and June 2018. The Tenant testified and acknowledged that he has not paid rent for these months.

Taking into consideration the evidence and testimony of both parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving the grounds on which the 10 Day Notice is based. I find that the Tenants failed to pay rent when due, in breach of the Act and tenancy agreement. Finally, the Tenant has provided no evidence to establish that he had any authority under the Act to withhold any rent.

Pursuant to sections 46 and 55 of the Act, I grant an order of possession to the Landlords. The Landlords must serve the Tenants with the order, which is effective two (2) days from service. The order must be served pursuant to section 89 (2) of the Act.

Further, pursuant to section 67 of the Act, I find that the Landlords are entitled to a monetary award for unpaid rent for May and June 2018 in the amount of \$1,500.00. I order that the entire amount of the security deposit held (\$375.00) be applied to the award granted to the Landlords under section 38 (4) (b) of the Act.

As the Landlords are successful in their application I grant them a monetary award for recovery of the filing fee in the amount of \$100.00.

I therefore grant the Landlords a monetary order in the amount of \$1,225.00.

As the Landlords has been granted an order of possession, I dismiss the Tenant's application for an order to cancel the 10 Day Notice.

Conclusion

I hereby grant the Landlords an order of possession for unpaid rent. This order, effective two (2) days from the date of service, must be served on the Tenants. The order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the Landlords a monetary order in the amount of \$1,225.00. This order must be served on the Tenants, and may be filed in, and enforced as an order of, the Provincial (Small Claims) 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 Act.

Dated: July 6, 2018

Residential Tenancy Branch