



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF OPRM-DR CNR CNQ

Introduction

This hearing dealt with the applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- an Order of possession for unpaid rent pursuant to section 46 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a cancellation of their 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act*; and
- a cancellation of the landlord's 2 Month Notice to End Tenancy for landlord's use of Property pursuant to section 49 of the *Act*.

Tenant H.T. appeared on behalf of the tenants, while landlord H.G. and his agent, S.A. attended the hearing. S.A. explained that she was simply attending the hearing so that she could give evidence regarding the service of documents. All parties were given a full opportunity to be heard, to present his sworn testimony and to make submissions.

The tenant acknowledged receipt of both the landlord's 10 Day and 2 Month Notices to End Tenancy, while both parties acknowledge receipt of each other's applications for dispute resolution and evidentiary packages. I find that both parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenants cancel the landlord's notices to end tenancy? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

Testimony provided by both parties explained that this tenancy began on November 1, 2017. Rent was \$2,100.00 per month, and a security deposit of \$1,050.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenants were served with two separate notices to end tenancy. On February 16, 2018 the landlord served the tenants in person with a 2 Month Notice to End Tenancy ("2 Month Notice"). The tenants acknowledged receipt of this notice. The tenants said that the reason cited on the 2 Month Notice was originally marked as *The tenant no longer qualifies for the subsidized rental unit*. The tenants said that they informed the landlord that the unit in question was not a subsidized rental unit and that the notice was therefore invalid. The tenants said that the landlord changed this notice to state, *The rental unit will be occupied by the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse*. A review of the 2 Month Notice submitted as part of the tenants' evidentiary package reveals a 2 Month Notice with both of these areas checked, and the landlord's initials next to an allegedly altered portion of the notice.

The landlord disputed that he altered the notice or that it was ever re-issued. He said that he served the tenants with one notice that contained an alteration in the area marked as "reasons" because he had originally, inadvertently marked the incorrect reason for its issuance. The landlord said that his parents had sold their house in February 2018 and were currently living with him. The landlord said that his family's home was very crowded, with seven people living in three rooms, and that his parents required their own space.

On May 2, 2018 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid rent ("10 Day Notice"). The landlord said that he served the tenants with this notice indicating unpaid rent of \$5,750.00 because the tenants had failed to pay half of

rent for March 2018, along with rent in its entirety for April and May 2018. The tenants disputed that any rent remained outstanding for March 2018, and they said that they felt no rent should be paid for April 2018 because of the 2 Month Notice to which they were subject. The tenants acknowledged that no rent had been paid for May 2018 but argued that several issues with the rental unit had led them to withhold rent for this month.

Analysis

I will begin my analysis by examining the 10 Day Notice and will then turn my attention to the 2 Month Notice.

At the hearing, the tenant acknowledged that he and tenant D.T. had failed to pay rent for May 2018. Testimony was also provided by the tenant that some rent was paid for March 2018 and reasons were provided as to why rent was not paid for April 2018. The tenants also failed to pay rent for May 2018 within five days of receiving the 10 Day Notice to End Tenancy.

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.”

While the tenants have disputed the 10 Day Notice, little evidence was presented at the hearing as to why this rent remained unpaid, other than the fact that several issues related to the rental unit caused the tenants to withhold rent.

In accordance with section 26 and 46(5) of the *Act*, the tenants’ decision to withhold rent for May 2018 has led to the end of this tenancy. No evidence was presented at the hearing demonstrating that the tenants had been granted an order from an arbitrator with the *Residential Tenancy Branch* that rent did not have to be paid. I find that the landlords are entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the tenants were unsuccessful in disputing the landlord’s 10 Day Notice, I find that this tenancy ends by way of the landlord’s 10 Day Notice and that the landlords 2 Month Notice does not need to be considered other than as it relates to the landlord’s application for a monetary award.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

The landlord is seeking unpaid rent of \$5,750.00. During the hearing the tenants acknowledged that rent was unpaid for May 2018. I therefore award the landlord a monetary award of \$2,100.00 in reflection of this unpaid rent and will only consider the landlord's application as it relates to unpaid partial rent for March 2018 and unpaid rent in its entirety for April 2018.

The tenants argued during the hearing that no rent remained unpaid for March 2018. They explained that no rent was due for April 2018 because the landlord had served them with a 2 Month Notice to End tenancy and they felt they were entitled to a free month's rent pursuant to section 49 of the *Act*. The tenants said that rent was paid for March 2018 by way of money order and cash. Copies of bank receipts for bank drafts in the landlord's name were uploaded to the hearing by the tenants. I find these receipts very compelling evidence that rent was paid in full for March 2018. The landlord failed to provide any evidence other than his oral testimony, which was disputed by the tenants, that rent remained outstanding for March 2018. No bank records, receipts or rental ledgers were provided to the hearing. I therefore decline to award the landlord a monetary award for unpaid rent related to March 2018.

The tenants acknowledged that no rent was paid for April 2018 because they had been served with a 2 Month Notice. The tenants did not move out of the rental unit as a result of the 2 Month Notice and submitted an application disputing its validity on May 8, 2018

Section 51(1) of the *Act* states, "a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is equivalent of one month's rent payable under the tenancy agreement." This section continues at section 51(1.1), "a tenant may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord."

Section 49(5) of the *Act* states, “a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receive the notice...if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.”

I find that the tenants failed to dispute the landlord’s 2 month notice within 15 days of receipt of the notice. The tenants are therefore conclusively presumed to have accepted the notice and were therefore entitled to free rent for April 2018. The monetary award provided to the landlord in reflection of unpaid rent for May 2018 is granted in reflection of the tenants overholding in the rental unit.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may withhold the tenants’ security deposit in partial satisfaction for their monetary award. As the landlord was successful in his application, he may recover the \$100.00 filing fee.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenants. The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$1,150.00 in favour of the landlords as follows:

Item	Amount
Unpaid rent for May 2018	\$2,100.00
Less Security Deposit	(-1,050.00)
Return of Filing Fee	100.00

Total =	\$1,150.00
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Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 10, 2018

Residential Tenancy Branch