



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, FF
TENANTS: CNC, CNR, ERP, FF, LAT, LRE, MNR, RP

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, for compensation for damages and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notices to End Tenancy, for compensation for emergency repairs completed by the Tenants, to set conditions on the Landlord's right of entry, to change the locks on the rental unit, for general repairs to the rental unit and to recover the filing fee.

Service of the hearing documents by the Landlord to the Tenants were done by posting it on the Tenant's door on June 13, 2018 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on May 28, 2018 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the Hearing the Arbitrator informed the Parties that the hearing will deal with the Landlord's application to end the tenancy, the Landlord's monetary claim for unpaid rent and the Tenant's application to contest the Notices to End Tenancy. The Landlord's monetary claim for damages and the Tenants application for compensation for emergency repairs completed, to set conditions of the Landlords right of entry, to change the locks and for general repairs are all separate and unrelated disputes to whether the tenancy will continue or end. Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says an Arbitrator may dismiss unrelated disputes within an application. The Tenant's applications for compensation for emergency repairs that are completed, to set

conditions of the Landlords right of entry, to change the locks, for general repairs and the Landlord's monetary claim for damages are all separate unrelated issues to the tenancy continuing or ending. I dismissed these parts of both applications with leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

Background and Evidence

This tenancy started on February 1, 2018 as a fixed term tenancy with an expiry date of February 1, 2019. Rent is \$1,300.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$650.00 and a pet deposit of \$650.00 on January 20, 2018. The Tenant said no move in condition inspection report was completed. The Landlord said they did a walk through, took pictures and signed that the unit was inspected at the start of the tenancy.

The Landlord said that the Tenant did not pay rent of \$1,300.00 for the months of March, April and May 2018, when it was due and as a result, on May 26, 2018, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 26, 2018 on the door of the Tenant's rental unit. Further the Landlord said that the Tenant has not paid the June or July 2018 rent in the total amount of \$2,600.00. The Landlord said they are requesting a monetary Order for \$6,500.00.

Further the Landlord said they are requesting to end the tenancy as soon as possible if the Tenants application is unsuccessful. The Landlord requested an Order of Possession for 2 days after service of the Order on the Tenant.

The male Tenant said he agrees the rent has not been paid for March, April, May, June and July, 2018, but there is a good reason that it was not paid. The Tenant said the house is in very poor condition and there is black mold throughout the house. As a result of the mold issues the male Tenant said he has had health issues. The male Tenant continued to say that he has been using the rent money to make emergency repairs to the house so that it is livable. The Tenant said he believes this was a reasonable course of action to take given the condition of the house.

The Arbitrator told the hearing that it is the responsibility of all tenants to pay the rent on time. If there are issues in a rental unit like repairs then the Tenant can make an

application to have the Landlord complete the repairs or the Tenant can apply to be reimbursed for the repairs. The Arbitrator said the rent should be paid first. At this point the male Tenant became abusive and the Arbitrator had to caution the male Tenant about his behaviour. The Tenants hung up the phone before the hearing ended.

The Landlord's said in closing that they want to end the tenancy as soon as possible.

Analysis

Section 26(1) says 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 Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenants have not established grounds to be granted an order to cancel the Notices to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated may 26, 2018 is valid and in full effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after the Order is served on the Tenants.

Further as both the Landlord and Tenant gave affirmed testimony that there is unpaid rent for March, April, May, June and July in the amount of \$6,500.00; I find for the Landlord and grant a monetary claim of \$6,500.00 for unpaid rent.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$6,500.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$6,600.00
Less:	Security Deposit	\$ 650.00	
	Pet Deposit	\$ 650.00	
	Subtotal:		\$1,300.00
	Balance Owing		\$5,300.00

As the Tenants have not been successful in their application I order the Tenants to bear the cost of the application filing fee that they have already paid.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$5,300.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application to dispute the Notices to End Tenancy is dismissed 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: July 18, 2018

Residential Tenancy Branch