



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, ERP, LRE, OLC, PSF, AS

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Preliminary Issue(s)

At the outset, it was discussed and clarified with all parties that the tenants had applied for two different applications for dispute and the landlord one application for dispute.

On the tenants application for an order allowing the tenants to assign or sublet the rental unit; to suspend or set conditions on the landlords' right to enter the rental unit were dismissed as the tenants' had filed this application in error due to their understanding of what an assignment or sublet was. The tenants clarified that they wanted to be allowed to have additional occupants in the rental unit and not to assign or sublet the tenancy. As such, these portions of the tenants' application were dismissed.

On the second application filed by the tenants, it was clarified that the tenants' request for emergency repairs, an order for the landlord to comply with the Act, regulations or tenancy agreement and request for the landlord to provide services or facilities required by law were unrelated to the issue of unpaid rent. The tenants only clarified that they had withheld rent because of issues with the landlord. As such, these portions of the tenants' application were dismissed with leave to reapply pursuant to rule 2.3. Residential Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. The tenants' remaining request to cancel the 10 Day Notice would be addressed with the landlord's application for dispute.

Issue(s) to be Decided

Are the landlords' entitled to an order of possession for unpaid rent?

Are the landlords' entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that the landlords served the tenants with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated June 7, 2018 in person on June 7, 2018. The 10 Day Notice stated in part that the tenants failed to pay rent of \$1,600.00 that was due on June 1, 2018.

The landlords claim that as of the date of this hearing the tenants have continued to not pay any rent for June and July 2018.

The tenants confirmed that no rent was paid for June 2018 as per the 10 Day Notice dated June 7, 2018. The tenants provided undisputed affirmed testimony that rent was held back in dispute over issues during the tenancy. The tenants provided undisputed affirmed testimony that a “stop payment” was made to the bank on the rent cheque for July 2018. The tenants confirmed in their direct testimony that no order from the Residential Tenancy Branch has been granted to the tenants to withhold rent from the landlord.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlords provided undisputed affirmed evidence that the tenants failed to pay rent for June and July of 2018 totalling \$3,200.00. The tenants admitted that they did not pay June and July 2018 rent as claimed by the landlord in dispute over issues during the tenancy. The tenants also confirmed that no order has been granted to the tenants to withhold rent.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice dated June 7, 2018 is valid and dismiss the tenant’s application to cancel the 10 Day Notice without leave to reapply. As the tenant’s application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on June 17, 2018, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenants admitted that they have not paid June and July 2018 rent totalling \$3,200.00. I find that the landlords are entitled to this amount. The landlords having been successful in their application for dispute are also entitled to recovery of the \$100.00 filing fee. I issue a monetary order in the landlords’ favour in the amount of \$3,300.00, to enable the landlords to recover unpaid rent from the tenants.

Conclusion

The tenants’ application is dismissed without leave to reapply.
The landlords are granted an order of possession for unpaid rent.
The landlords are granted a monetary order for \$3,300.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and enforced as orders of those courts.

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 19, 2018

Residential Tenancy Branch