



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNRL-S, FFL
 Tenants: CNR, ERP, RP, MNDCT, OLC

Introduction

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

The landlord’s application for dispute resolution was made on June 15, 2018. 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; and,
3. a monetary order for recovery of the filing fee.

The tenants’ application for dispute resolution was made on June 7, 2018. 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;
2. an order for emergency repairs;
3. an order for regular repairs;
4. an order for the landlord to comply with the Act; and,
5. a monetary order for utilities paid by the tenant.

One of the tenants, the landlord, and the landlord’s 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 evidence except for the landlord’s agent who noted that the first page of the tenants’ Notice of Dispute Resolution Proceeding package was missing.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision.

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 contained four matters (2 through 5, inclusive, listed in the Introduction, above) that I find are unrelated to the primary issue to be decided: will this tenancy continue?

I explained to the parties that I would be dismissing these unrelated claims on the tenant’s application. The tenant understood this, and acknowledged that because she was going to move out quite soon, that these issues would soon become moot.

As such, pursuant to Rule 2.3 of the *Rules of Procedure*, I dismiss the tenants’ application in respect of the following, with leave to reapply:

1. an order for emergency repairs;
2. an order for regular repairs;
3. an order for the landlord to comply with the Act; and,
4. a monetary order for utilities paid by the tenants.

Issues to be Decided

1. Are the tenants entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”)?
2. If the tenants are not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession for unpaid rent?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to a monetary order for recovery of the filing fee?
5. Is the landlord entitled to retain the tenants’ security deposit?

Background and Evidence

The parties testified that the tenancy began on February 26, 2018, that monthly rent was \$1,200.00, due on the first, and that the tenant paid a security deposit of \$600.00. The landlord submitted into evidence a copy of a written tenancy agreement.

The tenant, while agreeing on the terms of the tenancy as noted, said that the tenancy agreement submitted was never provided to her, and that the signatures on the agreement submitted by the landlord are not her and the other tenant’s signatures. The agent testified that she personally served the tenants with the landlord’s Notice on June 6, 2018, at approximately 4:25 p.m., with an end of tenancy date of June 16, 2018. The Notice was issued for unpaid rent in the amount of \$1,700.00 due on June 1, 2018. The landlord testified and confirmed that he seeks a monetary order in the amount of \$2,900.00, comprising partial unpaid rent for May 2018 in the amount of \$500.00, and

unpaid rent of \$1,200.00 for June, and \$1,200.00 for July 2018. The landlord submitted into evidence a copy of his statement of account which itemized the unpaid rent.

The tenant testified, and confirmed, that she did not pay the rent because there was no tenancy agreement. I asked the tenant who she met with when she first moved in, obtained the keys from, and paid the security deposit to. She replied that it was the landlord, the same individual attending today's hearing. I asked the tenant who she thought the "actual" landlord is, to which she replied, "I have no idea." The tenant did not offer any testimony regarding what, if any, efforts she made to determine who the landlord was, or to whom she should be paying rent.

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.

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, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if she paid rent within five days of service.

The landlord testified, and provided documentary evidence to support his submission, that the tenants did not pay rent for June or July, and paid only partial rent for May 2018. Further, there is insufficient evidence before me to find that the tenants had a right under the Act to deduct some or all of the rent.

While Section 13 of the Act requires the landlord to provide a copy of a tenancy agreement the fact that the tenants did not have a copy of the written tenancy agreement is not a legal reason under the Act to withhold rent. Further, I am not persuaded by the tenant's submission that she did not know who the landlord was, despite having met with him at the start of the tenancy, obtained keys from him, and paid him a \$600.00 security deposit, and that this confusion somehow justified the decision to withhold rent.

Taking into consideration all of the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim regarding unpaid rent for May, June and July 2018, in the total amount of \$2,900.00, and that he has met the onus of proving the ground on which the Notice was issued.

As such, I dismiss the tenants' application for an order cancelling the Notice, without leave to reapply.

Section 55 (1) of the Act states that

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.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having dismissed the tenants' application for an order cancelling the Notice, and having reviewed the Notice issued by the landlord on June 6, 2018, with an end of tenancy date of June 16, 2018, I find that the Notice complies with the requirements set out in section 52. As such, I grant the landlord an order of possession of the rental unit.

Given the above, I grant the landlord a monetary award of \$2,900.00 for unpaid rent. I further grant the landlord a monetary award of \$100.00 for recovery of the filing fee. Pursuant to section 38(4)(b) of the Act, the landlord may retain the security deposit in partial satisfaction of his claim.

A total monetary order of \$2,400.00 for the landlord is calculated as follows:

| Claim | Amount |
|------------------------------|------------|
| Unpaid rent | \$2,900.00 |
| Filing fee | \$100.00 |
| <i>LESS</i> security deposit | (\$600.00) |
| Total: | \$2,400.00 |

Conclusion

I dismiss the tenants' application for an order cancelling the Notice, without leave to reapply.

I grant the landlord an order of possession for unpaid rent. This order must be served on the tenants and is effective two days after service on the tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$2,400.00. This order must be served on the tenants and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 27, 2018

Residential Tenancy Branch