



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR OPC MNRL FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord LW primarily spoke on behalf of both co-landlords (the "landlord").

As both parties were present service was confirmed. The tenant confirmed receipt of all of the landlords' Notices to End Tenancy, application for dispute resolution and evidence. The tenant testified that they had not served any evidence of their own. Based on the undisputed testimony I find that the tenant was served with the landlords' materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in March, 2014. The current monthly rent is \$1,560.00 payable on the first of each month. The parties have agreed to a scheme where the tenant pays utilities for the whole rental building and they are subsequently reimbursed by the landlord for a portion of the utilities.

The tenant testified that they paid a security deposit of \$725.00 at the start of the tenancy. The landlord testified that they have no record of this payment.

The tenant failed to pay rent in the amount of \$1,560.00 on September 1, 2018. The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent dated September 7, 2018 for that amount. The tenant confirmed receipt of the 10 Day Notice on that date. The tenant subsequently made payment of \$519.69 on September 15, 2018. No other payments were made to the landlords.

The tenant submits that the payment of \$519.69 represents the entire amount owing to the landlords for the September, 2018 rent as it is the utilities for the building for the year, less the rent owed. The tenant testified that this manner of payment has been allowed by the landlords in past years.

The landlords submit that the tenant has provided no documentary evidence showing that the payment of \$519.69 is an accurate amount for utilities. They testified that the amount was provided by the tenant without prior discussions or information about the actual utilities paid. The landlord submits that any payment of utilities does not change the tenant's obligation to pay the monthly rent in full under their tenancy agreement.

Analysis

Section 46(4) of the Act provides that within 5 days of receiving a notice to end payment for non-payment of rent a tenant may pay the overdue rent in full or dispute the notice by making an application for dispute resolution. In the present case the parties confirm that the tenant received the 10 Day Notice on September 7, 2018. The tenant made payment of \$519.69 on September 15, 2018.

While the tenant submits that the payment made should be considered the full amount of the rental arrears, I find that the payment was made outside of the 5 days provided under the *Act*. Consequently, in accordance with section 46(5), I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I do not find that their acceptance of a payment of \$519.69 waived the landlords' right to seek an Order of Possession. Based on the correspondence and interactions between the parties it is apparent that payment was not treated as payment of rent by the landlords.

While the tenant paid \$519.69 to the landlords the tenant was unable to articulate clearly how this figure was calculated and how they believe that this single payment clears the rental arrear. The landlords submit that the payment of utilities is a separate issue from the rent and that the tenant is not permitted to unilaterally calculate and deduct from their monthly rent. Based on the

evidence I am unable to find that there was a valid agreement between the parties where the tenant was permitted to make deductions from the rent owed for utility payments. I find that the amount of \$1,560.00 was not paid for September, 2018 rent. I therefore, issue a monetary award in the landlords' favour for \$1,560.00 the unpaid rent, pursuant to section 67 of the *Act*.

As the landlords' application was successful the landlords may also recover the \$100.00 filing fee for their application.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,660.00 which allows the landlords to recover the unpaid rent for September, 2018 and their filing fee.

The tenant must be served with this Order as soon as possible. Should the tenant 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: October 30, 2018

Residential Tenancy Branch