



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR, CNR, ERP, MNDCT, MNRT, OLC, RP, RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;and
- authorization to recover the filing fee for this application, 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 parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for compensation. The primary issue before me is whether the tenancy continues or if it ends, as such, I hereby dismiss the tenants' monetary claim with leave to reapply as I find that it is unrelated and time did not permit for me to hear this portion of the tenants claim. This decision was explained in great detail to both parties and both parties indicated that they understood.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice set aside? If not, are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or Act?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order compelling the landlord to conduct repairs to the unit?

Is the tenant entitled to an order to have the landlord conduct emergency repairs for health and safety reasons?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. This month to month tenancy began on August 15, 2015 and has a monthly rent of \$1924.00 due anytime between the 1st of each month until the last day of each month to assist the tenant in paying as he is a contractor and has unpredictable pay days. The landlord testified that the tenant paid a

security deposit of \$925.00 when he moved in which he still holds. The landlord testified that the tenant has failed to pay the rent in full since March 2018. The landlord issued the 10 Day Notice on July 7, 2018 to the tenant, indicating an effective move-out date of July 20, 2018.

The landlords are seeking an Order of Possession, as well as a Monetary Order as outlined in the table below and in the landlords' Application:

Item	Amount
Unpaid March Rent	\$724.00
Unpaid April Rent	1924.00
Unpaid May Rent	1924.00
Unpaid June Rent	1924.00
Unpaid July Rent	1924.00
Unpaid August Rent	1924.00
Filing Fee	100.00
Minus Security Deposit	-925.00
Total Monetary Order Requested	\$9519.00

The tenant gave the following testimony. The tenant testified that he has paid the rent in full and that the landlord always demanded that he paid in cash. The tenant testified that despite requesting a receipt the landlord always refused to give a receipt.

Analysis

The tenant stated on numerous occasions that he had documented proof that he had paid the landlord, however the tenant did not submit any of that documentation for this hearing. In addition, I found the tenants testimony to "shape shift" throughout the hearing and was inconsistent. The tenant contradicted himself on several occasions as to when he paid and in the manner of payment. Further, the tenant was very evasive and would not answer direct questions despite the fact he was given very clear instructions and guidance. I did not find the tenants' testimony to be reliable based on the inconsistencies and contradictions.

I found the landlord very clear, concise and credible when he gave evidence. He provided compelling testimony as to the tenants ongoing disregard to pay the rent and that he wants the tenancy to end. Based on all of the above, I find that the landlord has proven his claim on a balance of probabilities, and I therefore find the 10 Day Notice to

End Tenancy for Unpaid Rent and Utilities is confirmed. The tenants' application to cancel the notice is dismissed.

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, July 20, 2018. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlord provided evidence that the tenant failed to pay the rent in full since March 2018. The landlords continue to hold the tenant's security deposit in the amount of \$925.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim. I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

As I have found that the tenancy is over, the balance of the tenants' application is now moot, accordingly; the remainder of the tenants' application is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two (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 \$9519.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid March Rent	\$724.00
Unpaid April Rent	1924.00
Unpaid May Rent	1924.00
Unpaid June Rent	1924.00
Unpaid July Rent	1924.00
Unpaid August Rent	1924.00
Filing Fee	100.00
Minus Security Deposit	-925.00
Total Monetary Order Requested	\$9519.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The tenants application is dismissed in its entirety without leave to reapply save and except for the monetary portion.

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: September 14, 2018

Residential Tenancy Branch