



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1018545 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL, CNR

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 and damages pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

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 tenant was represented by a legal advocate TL. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Is the tenant entitled to have the notice to end tenancy cancelled? 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 recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. This tenancy began on February 1, 2018, with monthly rent set at \$675.00 payable on the first of each month. The landlords collected, and still

hold, a security deposit of \$337.50 and a pet deposit of \$337.50 for a total of \$675.00 in deposits. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on July 11, 2018 to the tenant, indicating an effective move-out date of July 24, 2018. The landlord testified that the tenant has had “a running total of shortages” in regards to her rent. The landlord testified that as of today’s hearing the amount of unpaid rent is \$417.50 as well as an unpaid window repair the tenant is responsible for in the amount of \$95.20 for a total owing of \$512.70. The landlord requests a monetary order and order of possession.

TL submits that the landlord was unclear about how much was owing and that the tenant is in the position to pay it now. TL submits that since the tenant paid rent for the month of August, the tenancy should be considered reinstated. TL submits that the tenant would like to continue to reside in the unit.

Analysis

The tenant and TL do not dispute that there is unpaid rent since February 2018. Although TL submits that the tenancy should be deemed reinstated, they have failed to provide sufficient evidence to support that. Based on the landlords documentation and their testimony, I do find that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities’ on July 11, 2018 and has not paid any of the amount owing or provided sufficient evidence or justification to have the notice set aside, accordingly; I hereby confirm the notice and dismiss the tenants application in its entirety without leave to reapply.

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 24, 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 landlords provided evidence that the tenant failed to pay rent in full from February 2018 – April 2018. The landlord submits that the amount outstanding is \$512.70 which includes a window repair. TL submits that the notice should be based only on unpaid rent which she submits is \$417.50. I agree with TL, accordingly I find that the landlord is entitled to recover the amount of unpaid rent of \$417.50.

The landlord is also entitled to the recovery of the \$100.00 filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$517.50 from the tenant's deposits in full satisfaction of the monetary claim.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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. The landlord is entitled to retain \$517.50 from the security deposit in full satisfaction of the claim. The remainder of the deposit can be addressed by the parties at the end of the tenancy in accordance with section 38 of the *Act*.

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 10, 2018

Residential Tenancy Branch