



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlords: OPRM-DR, FFL
For the Tenants: CNR, MNDCT, FFT

Introduction

This decision is in respect of the landlords' and tenants' applications for dispute resolution made on October 24, 2018 and on October 22, 2018, respectfully, under the *Residential Tenancy Act* (the "Act"). The landlords seek an order of possession for unpaid rent, a monetary order for unpaid rent, and a monetary order for recovery of the filing fee. The tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), a monetary order for unspecified compensation, and a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on November 29, 2018, and a landlord, the landlords' agent, and the tenants attended. The parties 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 concerns in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the landlords entitled to a monetary order for unpaid rent?
4. Are the tenants entitled to a monetary order for unspecified compensation?
5. Are the landlords entitled to a monetary order for recovery of the filing fee?
6. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's agent (referred to as the "agent" for brevity) testified that the tenancy commenced on March 1, 2018 and is a one-year fixed term tenancy. Monthly rent, which is due on the first of the month, is \$2,100.00. The tenants paid a security deposit of \$1,050.00 and no pet damage deposit.

Rent has not been paid "since August," testified the agent, and the tenants have not paid rent for September, October, and November 2018. He anticipates that the tenants will not pay rent for December.

The agent commented the parties previously attended arbitration on October 18, 2018, from which they obtained a monetary order against the tenants for unpaid rent for September and October 2018 in the amount of \$4,200.00. The arbitrator also awarded the landlords a monetary order for \$100.00 for the filing fee. That file is referenced on the cover page of this decision as "Other File No."

On October 18, 2018, the landlords served the Notice on the tenants by posting it on the door of the rental unit. The Notice was also mailed to the tenants. The posting on door service was witnessed by a third party. The agent concluded his submissions by stating that with the absence of rent coming in the landlords are facing imminent bank foreclosure on their property, the rental unit.

In support of their application the landlords submitted a copy of the written tenancy agreement, a copy of the Notice, a copy of a Proof of Service, and a monetary worksheet.

The tenant (S.) testified that he has faced discrimination by his employer since May 2018 and has been unable to find employment, is experiencing a shortage of income, is stressed, has very little food (exacerbated by the approaching Christmas season), is facing homeless, and suffers from anxiety. He lamented the slowness of the justice system and hopes to resolve his rather dire living situation in due course.

The tenant also testified that he "is not gonna pay the rent" because, in his respectful opinion, he is entitled to two months' worth of free rent. If not, he and his son (the other tenant) are facing eviction and may have to "go into a tent in front of the RTB and HRT offices."

In final submissions, the tenant (O.) argued that he and his father are in a bad financial

situation and that they are stuck in this situation, and that everybody is struggling. He concluded by saying that he is more than willing to leave and is trying his best to find a new place.

I should note that both parties testified in detail about a fight, a noise complaint, damage to the rental unit (and subsequent repairs), and an end of tenancy agreement. The parties also testified about whether and to what extent the landlords were assisting the tenants in finding new accommodations. While I recognize that these are undoubtedly important issues to the parties, the applications before me are specifically related to the Notice and the potential cancelling of that Notice. As such, I will not review or further consider these other matters.

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.

Landlords' Application for a Monetary Order for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords comply 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 tenants that the Notice would be cancelled if the tenants paid rent within five days of service. The Notice also explained that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlords testified that the tenants have not paid rent for September, October, and November 2018, and that \$6,300.00 is currently in arrears. There is insufficient evidence before me that the tenants had a right under the Act to deduct some or all of the rent. While I am not unsympathetic to the tenants' financial plight, financial hardship is not a legal defense or right under the Act to not pay rent.

Taking into consideration the oral testimony of the parties, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim that the tenants owe \$6,300.00. However, the landlords were issued a monetary order by a previous arbitrator on October 18, 2018 for unpaid rent for September and October 2018, along

with the filing fee for that application. As such, I will only grant the landlords a monetary award in the amount of \$2,100.00 for the unpaid rent for November 2018. The landlords may, of course, enforce both the below-issued monetary order and the monetary order of October 18, 2018 in the Provincial Court of British Columbia (Small Claims).

I hereby order that the landlords retain the security deposit of \$1,050.00 in partial satisfaction of the award.

As the landlords are successful in their claim, I grant the landlords a monetary award in the amount of \$100.00 for recovery of the filing fee.

A total monetary order of \$1,150.00 for the landlords is therefore calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$2,100.00
Filing fee	100.00
<i>LESS</i> security deposit	(\$1,050.00)
Total:	\$1,150.00

Landlords' Application for an Order of Possession

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

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.

I find the Notice issued by the landlords on October 18, 2018, complies with the requirements set out in Section 52. As such, I grant the landlords an order of possession of the rental unit.

I therefore dismiss the tenants' application for an order canceling the Notice without leave to reapply.

Tenants' Application for a Monetary Order

The tenants did not testify about, or make any submissions regarding, the particulars of what it was they were seeking in relation to their claim for a monetary order. As such, I dismiss that aspect of their claim without leave to reapply.

Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$1,150.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

I hereby dismiss the tenants' application in its entirety, without leave to reapply.

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

Dated: November 29, 2018

Residential Tenancy Branch