



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR ERP LRE MNDC FF
Landlord: OPR MNR MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on December 10, 2018. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other’s documentary evidence and Notice of Hearing packages

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds both parties applied for, with leave to reapply, with the exception of the following claims:

Tenant:

- to cancel the 10-Day Notice for unpaid rent or utilities (the Notice).

Landlord:

- An order of possession for unpaid rent or utilities (based on the Notice); and,
- A monetary order for unpaid rent or utilities.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agree that monthly rent is set at \$1,400.00 and is due on the first of the month. Both parties also agree that the Landlord holds a security deposit in the amount of \$700.00.

The Landlord stated that the Tenant stopped paying rent and utilities in November 2018, and the Landlord issued a Notice to end Tenancy. The Landlord included a copy of this Notice, which indicates that as of November 3, 2018, the Tenant owed \$1,400.00, plus \$148.98 in unpaid utilities. The Landlord stated that the utilities cover the period of time from August through till September 2018, and are for gas and electricity. The Landlord stated he gave the Tenant a 30 demand letter for these utilities, but never got payment, so he included the amounts on the Notice. The Landlord stated that the Tenant also failed to pay for December rent, so he now owes \$148.98 in utilities, and 2 x \$1,400.00 for rent.

The Tenant does not dispute owing any of these amounts and acknowledged that he did not pay any of these amounts. The Tenant stated that he did not pay rent or utilities because he feels the Landlord should have fixed the lock on one of the doors in the rental unit. The Tenant also stated that he didn't pay the Landlord because he feels he

has a claim for harassment, and should be compensated by the Landlord. The Tenant felt he had the right to withhold rent and utilities for these reasons.

The Tenant acknowledged receiving the Notice, but could not recall when. The Landlord stated that he posted it to the door of the rental unit on November 3, 2018. The Tenant applied to cancel the Notice on November 13, 2018. The Tenant did not apply for more time to cancel the Notice.

Analysis

I note the Tenant does not recall when he received the Notice. The Landlord stated he posted the Notice to the Tenant's door on November 3, 2018. Pursuant to section 88 and 90 of the Act, I find the Tenant was deemed served with this Notice on November 6, 2018, the 3rd day after it was posted, November 6, 2018.

Section 26 of the *Act* states that the Tenant has 5 days to pay all outstanding rent and utilities, or file an application for dispute. There is no evidence the Tenant paid any of the outstanding amounts or had a right to withhold these amounts. I do not find the Tenant had a lawful right under the Act to withhold rent in the manner he did, based on the reasons he presented. Further, the Tenant did not file an application to cancel the Notice until November 13, 2018, which was outside the allowable 5 day window (after deemed receipt) to dispute the Notice.

Since the Tenant did not pay rent, nor did he file his application to cancel the Notice in time, I dismiss his application to cancel the Notice. I also note the Tenant did not apply for more time to file an application.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

Next, I turn to the Landlord's request for a monetary order based on unpaid rent and utilities. Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Although the Tenant feels he had a right to withhold rent, I find the evidence in this case indicates otherwise. Rent is due, and must be paid. If the Tenant feels he has grounds for other monetary claims, he can pursue those, but I find that rent must still be paid, unless he had a legal right to withhold this rent. I find there is insufficient evidence the Tenant had a legal right to withhold rent in this case.

The Tenant acknowledged that the amounts the Landlord is seeking are accurate with respect to what rent and utilities he has not paid. I find there is sufficient evidence to demonstrate that the Tenant owes and has failed to pay \$2,800.00 in rent (for November and December 2018) and \$148.98 in unpaid utilities, as specified above.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent and utilities, as above:	\$2,948.98
Filing fee	\$100.00
TOTAL:	\$3,048.98

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,048.98**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: December 11, 2018

Residential Tenancy Branch