



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL; DRI, CNR, OLC, LRE, LAT, FFT

Introduction

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

- 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, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 30, 2018 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for his application, pursuant to section 72.

Landlord WYL ("owner") and the tenant did not attend this hearing, which lasted approximately 39 minutes. Landlord KN ("landlord") and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to speak on behalf of the owner named in this application, as an agent at this hearing (collectively "landlords"). The tenant's agent confirmed that he had permission to represent his father, the tenant, at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant's agent confirmed receipt of the landlords' 10 Day Notice on October 31, 2018, stating that the tenant's female partner, who lives with the tenant in the rental unit, received the notice and provided it to the tenant's agent. The landlord stated that the notice was served to the tenant by posting it to his rental unit door on October 30, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on October 31, 2018.

The tenant's agent confirmed that the tenant's female partner has been residing with the tenant at the rental unit for some time and she received the 10 Day Notice and provided it to the tenant's agent. The tenant's agent also confirmed receipt of the landlords' application and testified that he filed the tenant's application on behalf of the tenant. Accordingly, I find that the tenant was properly served with the landlords' application and the 10 Day Notice even though he is currently residing in a rehabilitation home and suffered a stroke leaving him unable to speak or walk, as per the tenant's agent's testimony at this hearing. The tenant's agent claimed that the tenant's possessions were still in the rental unit and the tenant would return there after his rehabilitation. I proceeded with the hearing on the basis that the tenant's agent is the authorized representative for the tenant.

During the hearing, the tenant's agent confirmed that he was not pursuing the remainder of the tenant's application aside from disputing the 10 Day Notice and recovering the filing fee. He said that he did not require the other relief since he only filed for it because he was upset. Accordingly, these portions of the tenant's application are dismissed without leave to reapply.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenant's security deposit?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2006. A security deposit of \$1,750.00 and a pet damage deposit of \$1,000.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenant and his female partner continue to occupy in the rental unit.

The landlord testified that monthly rent in the amount of \$4,700.00 is payable on the first day of each month. The tenant's agent agreed that rent was due on the first of each month but disputed the amount of rent.

The landlords seek an order of possession against the tenant. The landlords issued the 10 Day Notice for unpaid rent of \$4,700.00 due on October 1, 2018, with a handwritten note that rent for \$4,700.00 was due for November 2018. The landlord claimed that no rent had been paid by the tenant from October to December 2018, totalling \$14,100.00. The landlords seek a monetary order of \$14,100.00 for unpaid rent from October 1 to December 31, 2018. The landlords also seek to recover the \$100.00 filing fee for their application.

The tenant seeks to cancel the landlords' 10 Day Notice and to recover the \$100.00 application filing fee. The tenant's agent testified that the tenant did not pay any rent to the landlords from October to December 2018. He said that because the tenant had a stroke, he was unable to access the tenant's financial accounts and was in the process of getting a power of attorney to do so. He stated that he could not provide any financial personal guarantee on behalf of the tenant in order to pay the rent.

The tenant's agent testified that the landlords did not provide the tenant with any legal notices of rent increase since 2010. He maintained that the landlords fabricated two notices of rent increase and did not keep any copies if they did provide it to the tenant.

He said that the tenant was forced to pay a higher rent amount and complained about the rent increases.

The landlord stated that she provided legal notices of rent increase to the tenant every one to two years but did not keep copies of it. She said that she re-wrote two notices of rent increase and provided it for this hearing because the Residential Tenancy Branch ("RTB") said that she had to provide them. She said all rent increases were within the allowable yearly *Regulation* amount except one, which the tenant agreed to pay due to repairs that had to be done due to leaky pipes. She maintained that the tenant agreed to all rent increases and provided 12 post-dated rent cheques each time, copies of which the tenant provided for this hearing.

Analysis

I find that the tenant agreed to pay rent increases throughout the period of this tenancy, as he provided 12 post-dated cheques to the landlords each time and he did not dispute the rent increases until these applications were filed in response to the landlords' 10 Day Notice. Despite the fact that the tenant's agent claimed that the tenant did not receive any notices of rent increase since 2010, the tenant did not file any dispute of the rent in the last 8 years. I find that the tenant failed to provide sufficient proof that he was forced by the landlords to pay a higher amount of rent. Accordingly, I find that the current amount of rent is \$4,700.00 per month and I find that the tenant agreed to pay this rent amount to the landlords. Therefore, the tenant's application to dispute a rent increase is dismissed without leave to reapply.

The tenant failed to pay the full rent due on October 1, 2018, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* on October 31, 2018, within five days of receiving the 10 Day Notice. However, the tenant's agent agreed at the hearing that the tenant failed to pay the rent, regardless of the amount of rent. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay full rent within five days led to the end of this tenancy on November 10, 2018, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 10, 2018. As this has not occurred, I find that the landlords are entitled to a fourteen (14) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

I have provided additional time for the tenant and his female partner to vacate the rental unit, since the tenant's agent indicated at the hearing that it would take some time given that the tenant is currently in a rehabilitation home. The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant failed to pay rent of \$4,700.00 to the landlord for each month from October to December 2018, totalling \$14,100.00. Although this hearing occurred on December 10, 2018, I find that rent was due on December 1, 2018. I find that the landlords will likely not be able to rent this unit to any new tenants for December 2018, as the tenant and his female partner are still occupying the rental unit as of the date of this hearing.

The landlords continue to hold the tenant's security deposit of \$1,750.00 and pet damage deposit of \$1,000.00. Over the period of this tenancy, \$96.11 in interest is payable on the deposits totalling \$2,750.00 beginning on the tenancy start date of February 1, 2006 and ending on this hearing and decision date of December 10, 2018. The interest has been calculated using the online deposit interest calculator available on the RTB website. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security and pet damage deposits plus interest, totalling \$2,846.11, in partial satisfaction of the monetary award.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I grant an Order of Possession to the landlords effective fourteen (14) days after service on the tenant. 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 order the landlords to retain the tenant's entire security and pet damage deposits plus interest totalling \$2,846.11, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$11,353.89 against the tenant. 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.

The tenant's entire application is dismissed 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 *Residential Tenancy Act*.

Dated: December 10, 2018

Residential Tenancy Branch