



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPRM-DR FFL

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants seek:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- an order to retain all or part of the security deposit in partial satisfaction of the monetary claim pursuant to section 38; and
- recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy began in February, 2018. The monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlord. The tenant failed to pay the full rent for the months of October, November, December 2018 and January 2019.

The landlord issued a blank 10 Day Notice dated November 14, 2018 by posting on the rental unit door. The tenant confirmed receipt of that 10 Day Notice. The tenant filed their application for dispute resolution disputing the 10 Day Notice on November 20, 2018. The landlord confirmed receipt of the tenant's application and evidence. The landlord subsequently issued another blank 10 Day Notice on November 20, 2018 by posting on the rental unit door. The tenant confirmed receipt of the 10 Day Notice dated November 20, 2018. The landlord issued a third 10 Day Notice dated November 26, 2018 by posting on the rental unit door. The 10 Day Notice of November 26, 2018 was completed in accordance with the Act and stated that there was a rental arrear of \$3,200.00.

The tenant disputes receipt of the 10 Day Notice of November 26, 2018 but confirmed that they have not paid the full rent for 4 months of this tenancy. The tenant testified that they made payment of \$500.00 by cash sometime in November. The landlord acknowledged that there was partial payment made but that did not reinstate the tenancy.

The tenant testified that they made a payment of \$1,200.00 by e-transfer at some point. The landlord disputed receiving this payment. The tenant did not submit any documentary evidence showing this payment was made.

The tenant made some reference to the condition of the rental suite and the motivation of the landlord in failing to perform repairs requested.

The landlord seeks a monetary award in the amount of \$10,600.00 which consists of the unpaid rent of \$6,900.00 as of the date of the hearing, January 4, 2019 and expected rental income losses for February and March, 2019.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

The landlord issued multiple 10 Day Notices to End this Tenancy. The first 2 Notices of November 14, 2018 and November 20, 2018 are blank save for being signed and dated by the landlord. The third 10 Day Notice dated November 26, 2018 does contain full particulars of the rental arrear. While the tenant disputed receiving the final 10 Day Notice of November 26, 2018 and filed their application for dispute resolution in response to the 10 Day Notice of November 14, 2018 they testified that they are aware of the rental arrear and the particulars of the landlord's claim. I find that each of the 10 Day Notices issued by the landlord were issued on the basis of the same rental arrear. I find that the 10 Day Notice of November 26, 2018 contains the full particulars but is issued on the basis of the same arrears as the November 14, 2018 10 Day Notice. Accordingly, I find that by filing an application to dispute the 10 Day Notice of November 14, 2018 on November 20, 2018 the tenants had effectively responded to all of the 10 Day Notices issued by the landlord. I find that the tenants were sufficiently served with the 10 Day Notices and the landlord's application for dispute resolution and materials, and that the landlord was sufficiently served with the tenant's application for dispute resolution and material in accordance with section 71 of the *Act*.

I accept the evidence of the parties that the rent for this tenancy is \$1,850.00. I accept the evidence of the parties that the tenants have failed to pay the full amount owing for 4 months. The tenant gave some testimony complaining about the condition of the rental suite but pursuant to section 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. I find that the tenant's complaints, which are not supported in documentary evidence, do not allow the tenant to make deductions from the rent.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,850.00. I accept the evidence that the arrears at the time of the 10 Day Notices was \$3,200.00. I accept the evidence that the tenants made one payment of \$500.00 at some point but this did not reinstate the tenancy.

I find that the tenants have failed to pay the full amount of the rental arrears within the timeframe permitted under section 46 of the *Act*, or at all. Accordingly, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the

effective date of the 10 Day Notice has passed I issue an Order effective 2 days after service.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the parties' evidence that there is a rental arrear of \$6,900.00 as at the date of the hearing. I find there is insufficient evidence in support of the tenant's position that they made a subsequent payment of \$1,200.00 by e-transfer. If such a payment was made it would be reasonable to expect there would be some evidence of a payment going through to the landlord. The tenant did not provide documentary evidence in support of this alleged payment. I find the landlord's calculation to be more reasonable.

I do not find that there is evidentiary basis for the landlord's claim for future rental income losses in February and March, 2019. Therefore, I dismiss the portion of the landlord's application for future rental losses with leave to reapply. Should the landlord experience additional losses the landlord is at liberty to make an application for a monetary award at that time.

As the landlord's application was successful the landlord is entitled to recover the \$100.00 filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$500.00 security deposit for this tenancy in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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 monetary order in the landlord's favour in the amount of \$6,500.00. The tenants must be served with this Order as soon as possible. Should the tenants 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 balance of the landlord's application is dismissed with 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: January 4, 2019

Residential Tenancy Branch