



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPRM-DR, FFL
For the tenants: CNR, ERP, RP, FFT

Introduction

This hearing was convened as a result of the Applications for Dispute Resolution (“applications”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 10, 2018 (“10 Day Notice”), for emergency repairs for health or safety reasons, for regular repairs to the unit, site or property, and to recover the cost of the filing fee.

The landlord, the tenants, and an agent for the tenants, CP, (“agent”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they were served by the other party with the application from the other party. The tenants confirmed that they received documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. The tenants also confirmed that they did not serve documentary evidence on the landlord.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

At the outset of the hearing, the parties agreed that the first name of the female tenant was spelled incorrectly. Therefore, by consent of the parties, the first name of the female tenant was corrected.

In addition to the above, as the landlord did not indicate the amount of utilities claimed on their monetary order worksheet, the parties were advised that the landlord's claim for unpaid utilities was being **dismissed with leave to reapply**.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is ending, should the tenants' security deposit be offset from the amount owing to the landlord, if any?
- If the tenancy is ending, is the remainder of the tenants' application regarding repairs moot?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on October 11, 2018. Monthly rent of \$2,250.00 is due on the first day of each month. The tenants paid a security deposit of \$1,125.00 which has accrued no interest and which the landlord continues to hold. There was no dispute that October 2018 rent was pro-rated to \$1,524.19 as the tenants moved into the rental unit on October 11, 2018.

The tenants confirmed that they received the 10 Day Notice on November 10, 2018. The tenants applied to dispute the 10 Day Notice on November 14, 2018, which is within the five day timelines provided under section 46 of the *Act* to dispute a 10 Day Notice.

During the hearing, the tenants confirmed that they cancelled the rent cheque for October 2018, and have not paid any rent for the months of November 2018, December 2018 and January 2019. The tenants stated that they have not paid rent due to repairs required in the rental unit. The tenants admitted that they did not write to the landlord for the repairs they were seeking prior to cancelling the October 2018 rent cheque.

The landlord stated that he is seeking unpaid rent for November, December and January also as the tenants continue to occupy the rental unit. The landlord testified that he is willing to accept an order of possession for January 31, 2019 at 1:00 p.m. and would like to retain the tenants' security deposit to offset the unpaid rent.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, as the tenants confirmed that they had not paid the amounts as claimed by the landlord and I find the tenants have breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

Although the tenants claim they were seeking repairs, the tenants admitted that they did not write to the landlord to advise the landlord of the repairs sought. Therefore, whether the landlord complied with the *Act* or not, the tenants still must pay the monthly rent and has the ability to seek remedy under the *Act* for any require repairs; however, the tenants are not authorized to simply withhold rent as they feel entitled to do so. Therefore, **I dismiss** the tenants' application to cancel the 10 Day Notice **without leave to reapply** due to insufficient evidence. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.**

[Emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **January 31, 2019 at 1:00 p.m.** as the tenants continue to occupy the rental unit without paying rent or money for use and occupancy. I find the tenancy ended on November 20, 2018 which was the effective vacancy date listed on the 10 Day Notice.

Monetary claim - Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which the parties agreed required that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$8,274.19** comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Unpaid pro-rate rent for October 2018	\$1,524.19
2. Unpaid November 2018 rent	\$2,250.00
3. Loss of December 2018 rent	\$2,250.00
4. Loss of January 2019 rent	\$2,250.00
TOTAL	\$8,274.19

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find the landlord has established a total monetary claim of **\$8,372.19** comprised of \$8,274.19 for items 1 through 4 described above, plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$1,125.00, which includes no interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$7,249.19**.

I find I do not need to consider the remainder of the tenant's application as it is now moot given that the tenancy ended on November 20, 2018. It is therefore dismissed without leave to reapply.

Conclusion

The tenants' application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is successful. The tenancy ended on November 20, 2018. The landlord has been granted an order of possession effective January 31, 2019 at 1:00 p.m.

The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$8,374.19 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$1,125.00 which has accrued no interest in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$7,249.19. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties at the email addresses confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2019

Residential Tenancy Branch