



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FFT FFL OPRM-DR

Introduction

This hearing dealt with applications from both the tenants and the landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), pursuant to section 46;
- an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlords pursuant to section 72.

The landlords applied for:

- an order of possession pursuant to section 55;
- a monetary award for unpaid rent pursuant to section 67;
- authorization to recover the filing fee from the tenants pursuant to section 72.

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

As both parties were present service of all documents was confirmed. The tenants confirmed receipt of the landlord’s 10 Day Notice of January 2, 2019, the application for dispute resolution of January 11, 2019 and evidence. The landlords confirmed receipt of the tenants application of January 3, 2019 and evidence. Based on the testimonies I find that each party was served with the respective documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is are landlords entitled to an Order of Possession?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the landlords entitled to a monetary award as claimed?

Is either party entitled to recover their filing fee from the other?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in March 2012 when the landlords took over from the previous property owners. The current monthly rent is \$975.00 payable on the first of each month. A security deposit of \$450.00 and pet damage deposit of \$450.00 are held by the landlords. The landlords issued a 4 Month Notice to End Tenancy for Landlord's Use on October 29, 2018. The 4 Month Notice provides that the tenancy will end on February 28, 2019.

The parties agree that the tenants failed to pay rent on January 1, 2019. The tenants said that they suggested the landlords use the security and pet damage deposits towards the rent. The landlords did not consent. The parties agree that the January 2019 rent in the amount of \$975.00 has not been paid at the time of this hearing.

The tenants submit that the landlords have failed to make necessary repairs to the rental unit throughout the tenancy and that they believe the landlords are acting in an underhanded manner. The tenants submitted into written evidence their account of interactions with the landlords whom they characterized as unreasonable.

Analysis

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

Notice. In this case, the tenant testified that they were served with a 10 Day Notice on January 2, 2019, and filed their application to dispute the notice on January 3, 2019. Accordingly, the tenants complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

The parties gave evidence that the rent for this tenancy is \$975.00 . The tenant testified that they have not paid rent for the month of January 2019. The tenant said that they suggested the landlord use the security deposit and pet damage deposit of \$900.00 towards rent for January 2019. The landlord did not consent to the use of the security deposit as rent.

Section 21 of the *Act* sets out that a tenant must not apply a security deposit as rent without the written consent of the landlord. Section 26(1) sets out that a tenant must pay rent when it is due under the tenancy agreement.

While the tenant has submitted that they feel the landlords have been negligent in caring for the property and have interacted with the tenants in a curt and unpleasant manner, this is wholly irrelevant and immaterial to the issue of payment of rent.

I find that the tenant was obligated to pay rent in the amount of \$975.00 on January 1, 2019. I accept the evidence of the parties that the tenant did not pay rent as required. For this reason I dismiss the tenant's application to cancel the 10 Day Notice.

Section 55 of the *Act* provides that:

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.

I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice,

and the grounds for the tenancy to end. Therefore I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I accept the evidence of the parties that rent for this tenancy is \$975.00 and that the tenants failed to make payment for January 2019. I accept the evidence that the arrears for this tenancy is \$975.00. Accordingly, I issue a monetary award in that amount in the landlord's favour.

I find that the complaints by the tenant regarding the landlords' behavior are not sufficient evidence that there has been any breach of the Act, regulations or tenancy agreement by the landlord. Consequently, I dismiss this portion of the tenants' application.

As the landlords were successful in their application the landlords are entitled to recover their filing fees.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$450.00 security deposit and \$450.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. 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 award in the landlord's favour in the amount of \$175.00. 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.

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: February 11, 2019

Residential Tenancy Branch