



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR MNR FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on January 11, 2019, and was amended on February 4, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on January 16, 2019, and was amended on January 25, 2019 (the “Tenant’s Application”). The Tenant applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, pursuant to the *Act*.

The Landlords were represented at the hearing by A.G., who provided affirmed testimony. The Tenant did not attend the hearing. Accordingly, the Tenant’s Application is dismissed, without leave to reapply.

On behalf of the Landlords, A.G. testified the Landlords’ Application package was served on the Tenant in person on January 11, 2019. In the absence of evidence to the contrary, I find the Landlords’ Application package was served on and received by the Tenant on that date. In any event, the Tenant’s Application was crossed with the Landlords’ Application. Therefore, I am satisfied the Tenant was aware of the date and time of the hearing, and of the means to participate, although he did not do so.

On behalf of the Landlords, A.G. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Are the Landlords entitled to an order of possession?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicates the month-to-month tenancy began on January 1, 2018. Rent in the amount of \$650.00 per month is due on the third day of each month. A.G. confirmed the Tenant did not pay a security deposit or a pet damage deposit.

On behalf of the Landlords, A.G. testified the Tenant did not pay rent when due on June 3, 2018. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 11, 2019 (the "10 Day Notice"), which was served on the Tenant in person on the same date. At that time, \$600.00 was outstanding. A hand-written receipt confirming a partial payment of \$50.00 was submitted in support. The Tenant's Application confirms receipt of the 10 Day Notice on January 11, 2019. A copy of the 10 Day Notice was submitted into evidence.

A.G. testified further that the Tenant did not pay rent when due on February 3, 2019. He testified that he tried to collect rent and was told by the Tenant that rent was not due until the dispute resolution proceeding had concluded.

As noted above, the Tenant did not attend the hearing to dispute the Landlords' evidence.

Analysis

Based on all of the above, the unchallenged evidence and testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the Landlords complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* permits a Landlords to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. Section 46(4) of the *Act* confirms a tenant has five days after receipt of a notice to end tenancy to pay the overdue rent or dispute the notice by making an application for dispute resolution. Section 46(5) of the *Act*, confirms that failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant did not pay rent in full when due on June 3, 2018, and February 3, 2019, and that rent in the amount of \$1,250.00 is currently outstanding. Accordingly, I find the Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Further, I find the Landlords are entitled to a monetary award in the amount of \$1,250.00 for unpaid rent. Having been successful, the Landlords are also entitled to recover the \$100.00 filing fee paid to make the Landlords' Application.

Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$1,350.00, which has been calculated as follows:

Claim	Amount awarded
Unpaid rent (June 2018):	\$600.00
Unpaid rent (February 2019):	\$650.00
Filing fee:	\$100.00
TOTAL:	\$1,350.00

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$1,350.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 28, 2019

Residential Tenancy Branch