



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR ERP FFT RP RR
Landlord: FFL MNRL OPR

Introduction

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

The Tenant’s Application for Dispute Resolution was made on December 13, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel at 10 Day Notice for unpaid rent or utilities (the “10 Day Notice”) dated December 10, 2018 ;
- an order for emergency repairs;
- an order to reduce rent for repairs;
- an order for regular repairs; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on December 21, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

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

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single Application. In this circumstance the Tenant indicated several matters of dispute on the Application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants’ request to cancel the 10 Day Notice at this proceeding as it relates to unpaid rent. Therefore, the Tenant’s claim for emergency repairs, regular repairs and rent reduction are dismissed, with leave to re-apply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated December 10, 2018, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. Both parties confirmed the tenancy began on December 1, 2017. Rent in the amount of \$800.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00 which the Landlord holds.

The Landlord's Claim

The Landlord testified that he did not receive rent in the amount of \$800.00 from the Tenant when due on December 1, 2018. The Landlord stated that he subsequently served the Tenant with the 10 Day Notice dated December 10, 2018, with an effective date of December 20, 2018 by posting it on the Tenants door. The Tenant confirmed receipt.

The Landlord testified that the Tenant has not paid any amount towards the unpaid rent for December 2018. The Landlord stated that the Tenant is not required to pay rent for January 2019 as the Landlord had previously issued a 4 Month Notice to End Tenancy to the Tenant which, according to Section 51 of the *Act*, the tenant is entitled to receive an amount that is equivalent to one month's rent.

The Landlord stated that he is seeking an order of possession as well as a monetary order relating to the unpaid December 2018 rent. The Landlord is wishing to apply the security deposit in the amount of \$400.00 to the outstanding money owed.

The Tenant's Claim

The Tenant acknowledged that he did not pay rent in the amount of \$800.00 when due on December 1, 2018. The Tenant testified that he does not feel as though he should pay rent, as he is frustrated with the Landlord's unwillingness to complete repairs in the rental unit. The Tenant indicated that there has been a shower leak which has been causing mould issues in the rental unit. The Tenant feels as though he has been sick as a result.

The Tenant agreed that there was an understanding between the parties that there was no requirement to pay rent for January 2019 for compensation relating to the 4 Month Notice Issued.

The Tenant is seeking to cancel the 10 Day Notice dated December 10, 2018.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find;

It was undisputed that the Tenant failed to pay rent in the amount of \$800.00 to the Landlord when due for December 2018.

While the Tenant is frustrated with the Landlord for the lack of repairs made to the rental unit; Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In relation to the 10 Day Notice dated December 10, 2018, the Tenant acknowledged receipt. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Landlord served the Tenant with a the 10 Day Notice dated December 10, 2018 with an effective vacancy date of December 20, 2018, by posting it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

I dismissed the Tenant's Application to cancel the 10 Day Notice dated December 10, 2018 without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was not successful with their Application the Tenant is not entitled to recover the filing fee from the Landlord.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$800.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$800.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
TOTAL:	\$500.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$500.00. 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 6, 2019

Residential Tenancy Branch