



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR ERP

Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 1, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony.

Both parties were provided 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Service of Documents and Preliminary Findings

The Tenants confirmed receipt of the Landlord’s application package. In this package the Landlord sent her application, Notice of Hearing, Amendment, and evidence.

The Landlord stated that she did not get a copy of the Tenants’ application or evidence. The Tenants stated that they sent the package to the address the Landlord had listed as the address for service on the 10 Day Notice to End Tenancy (the Notice). However, the Tenants testified that they only put down part of the Landlord’s mailing address when they mailed the package and this is why it was never delivered. The Tenants stated that they did not put the Landlord’s mailbox number. As per the Notice, which the Tenants

acknowledge getting, the Landlord's address for service was clearly listed, and it was the Tenants error when they only put a partial address.

I find the Tenants have not sufficiently served their Notice of Hearing and evidence to the Landlord, as they did not mail it correctly, despite being aware of the proper address. The onus is on the applicant to prove they have served the other party with their documentation.

As the Tenants' Notice of Hearing has not been sufficiently served for the purposes of this *Act*, I dismiss the Tenants' application in full.

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. Having reviewed the Notice uploaded by both the Landlord and the Tenants, I find that the Notice complies with the requirements of form and content. The Landlord is issued an order of possession, effective 2 days after it is served on the Tenants.

The only remaining issue to deal with in this proceeding is the Landlord's application for monetary compensation based on unpaid rent, which will be addressed further below.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that monthly rent is \$1,090.00, and is due on the first of the month. The Landlord testified that she holds a security deposit in the amount of \$525.00. The Landlord provided a copy of the tenancy agreement and Notice of Rent Increases to support this.

The Landlord stated that the Tenants have always been late paying rent, and this time they have actually fallen behind on their rent significantly. The Landlord stated that the Tenants owed rent from November 2018 in the amount of \$440.00. Then, when January 1, 2019 came around, the Landlord stated that the Tenants failed to pay rent in the amount of \$1,090.00, bringing the total at that time up to \$1,530.00. The Landlord

stated that the Tenants then made a \$400.00 payment on January 18, 2019. The Landlord further stated that the Tenants never paid rent for February 2019, and now owe \$2,220.00, as of this hearing.

The Tenants stated that they do not owe this \$440.00 the Landlord is referring to from November 2018, because one of the Tenants, GH, did some drain work for the Landlord. GH stated that he cleared all the drains for the other units, including his own, and he should be paid for this. GH also stated that he has done several other jobs for the Landlord over the duration of his tenancy, including cutting the lawn, and some general maintenance.

The Landlord acknowledges that the Tenant has done some of this work for her, but stated that she never agreed to pay him \$400.00 for the drain work, as he has stated. There is no written documentation of any work contract as part of this hearing. The Landlord acknowledged that she has paid him for lawn maintenance in the past.

The Tenants also stated that they have withheld rent for January and February 2019 because of some issues with the rental unit. The Tenants stated that there is mold which has affected their health, and some repairs that need to be done. The Tenants stated that they have the money for rent, sitting in their account, but they are holding onto it because of the issues they have identified that need addressing.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I note the Tenant appears to have done work for the Landlord in the past, in exchange for money. I acknowledge that the Tenant is providing some amount of labour, for money. However, I find this paid labour is a separate contract and agreement, outside of the rent that is due under the tenancy agreement. Based on the evidence presented, I find that any agreement the Landlord and Tenant had for the Tenant to provide labour/services for the rental property and other units is a separate contract which is not enforceable under the Residential Tenancy Act. It appears these services were

contracted as needed, and were not inherently part of monthly rent. I decline jurisdiction on any amount of money that may have been owed to the Tenants as a result of one of the Tenants providing labour to maintain the rental complex.

I find the Tenants were not legally entitled under the Residential Tenancy Act to withhold rent based on work they did for the Landlord, or based on their dissatisfaction for the condition of the rental unit. I note the remedy for resolving issues with a rental unit is to make an application for dispute resolution, and to ask for the issues to be resolved. Rent must still be paid, regardless of whether or not the Landlord breached the Act, and whether or not the Tenant is unhappy with the rental unit.

The Tenants did not dispute that the payments listed by the Landlord, and only stated they were entitled to withhold some of the money because of work one of the Tenants did for the Landlord. As stated above, I decline to hear issues related to the Tenants paid labour. I find the Tenants owe rent as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
November 2018	Rent <u>past</u> Due	\$440.00		\$440.00
January 1, 2019	Rent Due	\$1,090.00		\$1,530.00
January 18, 2019	Rent Payment		\$400.00	\$1,130.00
February 1, 2019	Rent Due	\$1,090.00		\$2,220.00
Total Accrued Balance				\$2,220.00

Section 72 of the *Act* allow me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. Section 72 of the Act also allows to me to award the successful party with the return of the filing fee they paid for their application. Since the Landlord was largely successful, I award this fee to be paid by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: As laid out above	\$2,220.00
PLUS: Filing Fee	\$100.00

Less:	
Security Deposit currently held by Landlord	(\$525.00)
TOTAL:	\$1,795.00

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,795.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 4, 2019

Residential Tenancy Branch