



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR, CNR, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenant’s security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover the filing fee for this application, 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, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

SA gave testimony regarding the following facts. This tenancy began on February 13, 2018, with monthly rent set at \$1800.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$900.00 and a pet deposit of \$900.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on January 15, 2019 to the tenant. The tenant further failed to pay the rent for February and March 2019. The landlord testified that as of today's hearing the amount of unpaid rent is \$6200.00. SA requests that the landlord be granted an order of possession, the recovery of the filing fee, a monetary order to reflect the unpaid rent and to retain the deposits.

KC gave the following testimony. KC testified that he agrees that he owes rent and will have to move out but requests an extension to allow him to get his affairs in order. SD requests that the landlord reconsider her position and grant the tenant some mercy and allow him to remain in the unit until March 15, 2019.

Analysis

Section 55(1) of the *Act* reads as follows:

- 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.

Although the tenant questioned the amount of unpaid rent, he did not provide sufficient disputing evidence to challenge the landlords' calculation but did agree that rent hasn't been paid for several months. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on the above and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, January 25, 2019. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided sufficient evidence that the tenant failed to pay the rent in full since November 2018. Despite the tenants' best efforts, the remaining balance of outstanding rent on this date is \$6200.00 which includes March 2019 as the tenant advised that he is unable to pay it. I find that the landlords are entitled to \$6200.00 in arrears.

The landlords continue to hold the tenant's security deposit and pet deposit in the amount of \$1800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security and pet deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

The tenant has not been successful in their application.

Conclusion

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

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant 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 \$4500.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and the filing fee, and also allows the landlords to retain the tenant's security and pet deposit: The tenant(s) must be served

with this Order as soon as possible. Should the tenant(s) 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: March 01, 2019

Residential Tenancy Branch