



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FFL, OPUM-DR

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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; 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;and
- an order to have the landlord conduct emergency repairs as required by law pursuant to section 33.

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 notice cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the tenant entitled to an order compelling the landlord to make emergency repairs?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave the following testimony. The tenancy began on August 15, 2018 with the monthly rent of \$2200.00 due on the first of the month. The tenant is also responsible for 60% of the utilities. The landlords testified that the tenant paid a security deposit of \$1100.00 which they still hold. The landlords testified that the tenant has failed to pay the rent or utilities since December 2018. The landlords testified that they served the tenant a 10 Day Notice for Unpaid Rent or Utilities on January 22, 2019. The landlords testified that the tenant hasn't paid \$8800.00 in rent and "approx. \$1200.00 in utilities. The landlords request a monetary order and an order of possession.

The tenant gave the following testimony. The tenant testified that she does not agree with the amount that the landlords are seeking. The tenant testified that she always paid cash and did not receive a receipt for any payments. The tenant testified that she withheld February and March's rent due to the poor condition of the unit. The tenant testified that she will be moving out by no later than the end of March and agrees that she owes \$4400.00.

Analysis

The landlord is requesting a monetary order as part of their application, however; the landlord was unclear as to the amount. The landlord provided three different calculations. The landlords' testimony was in direct contradiction to their documentary evidence. Despite being given three opportunities to clarify the amount, the landlord was unable to provide an exact calculation. In addition, the landlord was unable to provide the exact amount of unpaid utilities; the landlord stated the amount was "approximately and about \$1200.00". Based on the insufficient and at times contradictory evidence before me, I find that the amount of unpaid rent is \$4400.00 as stated by the tenant. The tenant was clear, concise and compelling when providing the amount of unpaid rent. The tenant stated that she felt she was justified in withholding the rent.

Section 26 of the Act addresses the issue before me as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Based on the tenants' acknowledgement and their testimony, I find that the tenant was not justified to withhold the rent and therefore was in breach of the tenancy agreement and section 26 of the Act.

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.

Based on the above, I hereby dismiss the tenants' application in its entirety without leave to reapply.

Based on my decision to dismiss the tenant's application for dispute resolution 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, February 1, 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.

As noted above, I find that the landlords are entitled to \$4400.00 in unpaid rent, but have not provided sufficient evidence to be granted any monies toward utilities; I therefore dismiss their request for unpaid utilities. The landlords continue to hold the tenant's security deposit in the amount of \$1,100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord 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 \$3400.00 Monetary Order in favour of the landlord 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 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.

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

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 12, 2019

Residential Tenancy Branch