



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPC MNR MNSD FF
 Tenant: MT CNR ERP OLC FF

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 April 12, 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;
- an order permitting the Landlords to retain the security deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on April 10, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting more time to make an application for dispute resolution;
- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlords make emergency repairs for health or safety reasons;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by J.H. The Tenant attended the hearing on his own behalf. Both J.H. and the Tenant provided affirmed testimony.

On behalf of the Landlords, J.H. testified the Landlords' Application package was served on the Tenant by registered mail on April 11, 2019. The Tenant denied receipt. However, a Canada Post registered mail receipt was submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenant is deemed to have received the Landlords' Application package on April 16, 2019.

The Tenant testified the Tenant's Application package was served on the Landlords a couple of days after receipt from the Residential Tenancy Branch. J.H. acknowledged receipt on behalf of the Landlords. I find the Landlords were served with the Tenant's Application package on April 12, 2019.

The parties were provided with 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.

Preliminary and Procedural Matters

The Tenant requested an order granting more time to make an application for dispute resolution. Section 66(1) of the *Act* permits the director to extend a time limit established by the *Act* in "exceptional circumstances".

In this case, the Tenant confirmed he received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on April 3, 2019. Pursuant to section 46(4) of the *Act*, the Tenant had 5 days after receipt to dispute the 10 Day Notice. Section 46(5) of the *Act* confirms that failure to do so results in the conclusive presumption the tenant accepts the tenancy ends on the effective date of the notice. The Tenant submitted the Application on April 10, 2019, 7 days after receipt of the 10 Day Notice.

The Tenant testified that he was having a difficult time with the Service Portal and with his email address. I find these are not exceptional circumstances as contemplated under the *Act*. I find that the Tenant's request for more time to make the Tenant's Application is dismissed, without leave to reapply. As a result, I find the Tenant's Application was filed after the time limit set out in section 46(4) of the *Act*. Therefore, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

As the tenancy is ending, it has not been necessary for me to consider the remainder of the Tenant's Application in this Decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order permitting the Landlords to retain the security deposit in partial satisfaction of the claim?
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 confirmed the fixed-term tenancy began on April 1, 2019, and was expected to continue to March 31, 2020. Rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00, which the Landlords hold.

J.H. testified the Tenant did not pay rent when due on April 1 and May 1, 2019, and that \$3,000.00 is currently outstanding.

In reply, the Tenant acknowledged rent was not paid as claimed, but stated he is disabled and is having difficulty obtaining funds from ICBC.

Analysis

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

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.

In this case, I find the Tenant did not pay rent when due on April 1 and May 1, 2019, and that rent in the amount of \$3,000.00 is outstanding. I am not satisfied that the Tenant had any right under the *Act* to deduct all or a portion of rent. His entitlement to compensation or benefits payable by ICBC does not impact his obligation to pay rent when due. Therefore, I find the Landlords are entitled to a monetary award in the amount of \$3,000.00 for unpaid rent. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Landlords' Application. In the circumstances, I find it is appropriate to order that the Landlords may retain the security deposit in partial satisfaction of the Landlords' claim.

Pursuant to section 67 of the *Act*, the Landlords are granted a monetary order in the amount of \$2,350.00, which has been calculated as follows:

Claim	Amount awarded
Unpaid rent:	\$3,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$750.00)
TOTAL:	\$2,350.00

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 \$2,350.00. 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: May 14, 2019

Residential Tenancy Branch