



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
 OPUM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on March 11, 2019. The Tenants applied to cancel a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on March 2, 2019, and to recover the filing fee paid for their application. The Landlord’s Application for Dispute Resolution was made on March 14, 2019. The Landlord applied to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on March 2, 2019, for a monetary order for unpaid rent, and to recover the filing fee paid for the application.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to recover the filing fee for this application?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began as a verbal tenancy on November 21, 2018. Rent in the amount of \$1,500.00 was to be paid by the first day of each month and that the Tenants had not paid the Landlord a security deposit or pet damage deposit at the outset of this tenancy. Both the Landlord and the Tenant agreed that they had a verbal agreement that the Tenants would paint the rental unit in exchange for rent.

The Landlord testified that she hired a property management company to take over the management of the rental property on February 14, 2019. The Landlord testified that on February 21, 2019, the Tenants and the Landlord signed a written tenancy agreement, that was backdated to start on February 1, 2019, for an initial six-month fixed term, that would roll into a month to month. Rent in the amount of \$1,500.00 was to be paid by the first day of each month and that the Tenants were to pay the Landlord a security deposit of \$750.00 by February 28, 2019. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that he had signed the written tenancy agreement with the Landlord on February 21, 2019. Both parties agree that the security deposit for this tenancy was never paid by the Tenants.

The Landlord testified that on March 3, 2019, she issued the Notice to end the tenancy, with an outstanding rent amount of \$3000.00 for February and March 2019 and \$750.00 in an outstanding security deposit. The Landlord testified that the Tenants are currently outstanding \$4,500.00 in rent for February, March and May 2019. The Landlord is requesting an order of possession to enforce the Notice and a monetary order for the outstanding rent. The Landlord provided a copy of the Notice to end tenancy into documentary evidence.

The Tenant testified that he had not paid the rent for February and March as he had completed additional painting to the rental property. The Tenant testified that after the tenancy agreement had been signed, and the new property manager had left, he and the Landlord had entered into a new verbal agreement for him to continue painting the rental unit and that he had not paid the rent in exchange for his labour costs.

The Landlord testified that she did not enter into a new verbal agreement with the Tenant for the exchange of painting labour for free rent.

Analysis

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

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants received the 10-Day notice on March 5, 2019, three days after it was posted to the front door of the rental unit and did apply to dispute the Notice within the legislated timeline.

I accept the testimony of both parties that the Tenants have not paid the outstanding rent as stated on the notice. I find that the Tenant has not provided any evidence to show that he had an agreement with the Landlord to exchange his labour cost for

painting the rental unit for rent. Therefore, I find that the Tenants are in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenants' application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

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.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenants' application, pursuant to section 55 of the Act, I must grant the Landlord an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for February, March and May 2019, in the amount of \$4,500.00.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in her application, I find that the Landlord is entitled to recover her \$100.00 filing fee for this hearing.

As the Tenants have been unsuccessful in their application, I find that the Tenants are not entitled to recover their \$100.00 filing fee for this hearing.

I grant the Landlord a Monetary Order in the amount of \$4,600.00; consisting of \$4,500.00 in unpaid rent, and \$100.00 for the recovery of the filing fee.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$4,600.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: May 2, 2019

Residential Tenancy Branch