



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR ERP FFT LAT LRE MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order for emergency repairs pursuant to section 33;
- authorization to recover the filing fee from the landlord pursuant to section 72;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- a monetary award for damages or loss pursuant to section 67.

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. Both parties were assisted by family members.

As both parties were present service of materials was confirmed. The tenant confirmed receipt of the landlord's 10 Day Notice dated April 9, 2019 and evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary materials. Based on the testimonies of the parties I find that each was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to make emergency repairs?

Is the tenant entitled to recover their filing fee from the landlord?

Should any orders be made authorizing the tenant to change the locks to the rental unit or restricting the landlord's right to enter?

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in March 2019. The monthly rent is \$1,800.00 payable on the first of each month. The tenant paid a security deposit of \$1,200.00 at the start of the tenancy which is still held by the landlord. No condition inspection report was prepared for this tenancy.

The tenant testified that the rental unit was riddled with deficiencies such that they felt rent was not payable on April 1, 2019. The tenant submits that they made requests to the landlord to rectify the deficiencies but the landlord failed to take appropriate action.

The tenant seeks a return of the full security deposit in the amount of \$1,200.00 and for a monetary award of \$500.00 for various cleaning supplies and costs they incurred in making the rental unit habitable.

Analysis

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages. The file names are inconsistent and unclear as to their contents and uploaded non sequentially so that it is confounding for the reader. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on April

11, 2019, and filed a notice of dispute application on April 15, 2019 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid any rent for April and May 2019 for this tenancy.

Pursuant to 26(1) of the *Act*, 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.

The tenant submits that they do not need to pay the rent as the landlord has failed to make necessary repairs. I find that the tenant's position is not supported in the *Act*. While I accept the tenant's submission that this has been a fraught tenancy and they have had a particularly bad experience with the landlord, I find that does not give rise to a basis to withhold the payment of monthly rent.

I accept the evidence of the parties that the rent has not been paid within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss this portion of the tenant's application.

Section 55 of the *Act* provides that:

- 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 dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As this tenancy is ending I find that it is unnecessary to consider those portions of the tenant's application seeking orders pertaining to an ongoing tenancy such as the request for repairs. I dismiss the portion of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 19 of the *Act* sets out that a landlord must not accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent. I accept the evidence of the parties that the tenant paid \$1,200.00 as security deposit for this tenancy despite the monthly rent being \$1,800.00 and the maximum security deposit that was payable being \$900.00. As such, pursuant to section 19(2) I find that the tenant is entitled to recover the overpayment of \$300.00 from the landlord. I issue a monetary award in the tenant's favour in that amount.

I find there is insufficient evidence in support of the tenant's monetary claim of \$500.00 for the cost of cleaning and repairs performed. I find that the tenant has not established on a balance of probabilities that this figure is an accurate representation of their costs nor that it was incurred as a result of the landlord. As the tenant has not established their claim on a balance of probabilities I dismiss this portion of the application.

While the tenant seeks a return of the security deposit for this tenancy I find that this is premature as this tenancy has not ended nor has the tenant provided a forwarding address in writing in accordance with section 38 of the *Act*. Accordingly, I dismiss this portion of the tenant's application with leave to reapply. Upon providing a forwarding address in accordance with the *Act*, the obligations of the landlord under section 38 will begin.

As the tenant's application had merit I find they are entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **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 monetary order in the tenant's favour in the amount of \$400.00 against the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the portion of the tenant's application seeking a return of the security deposit with leave to reapply.

The balance of the tenant's application is dismissed 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: May 9, 2019

Residential Tenancy Branch