



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR (TENANT); FFL MNRL-S OPC OPR (LANDLORD)

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (Ten-Day Notice) pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 23 minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlords and I had

called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

At the outset of the hearing, the landlords testified that all three attending landlords were the owners of the unit and requested an amendment to add the additional names. I accordingly amended the proceedings.

Service

The landlords testified the landlords personally served the Notice of Hearing and Application for Dispute Resolution on the tenants on June 4, 2019. Further to section 89, I find the landlords served the tenants on June 4, 2019.

Amendment to Claim

The landlords requested an amendment to the landlords' application to increase the monetary order requested to \$3,095.00 to include additional outstanding rent for the month of June 2019 and to account for payments made by the tenants which were accepted by the landlords for use and occupancy only. The landlords' application, submitted on May 13, 2019, pre-dated the due date for rent for June 2019 and as such the landlords' claim does not reflect outstanding rent for this month.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenants could reasonably anticipate the landlords' claim would be amended to include outstanding rent for the month of June 2019 and to consider payments on outstanding rent made by the tenants. The amendment would not be prejudicial to the respondents.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlords' application to increase the landlords' overall claim for outstanding rent to consider rent due June 2019 and payments made by the tenants. The total monetary order requested by the landlord is \$3,095.00 as well as \$100.00 reimbursement of the filing fee for a total monetary claim of \$3,195.00.

Amendment

The landlords requested an amendment to the landlords' application to request that the landlords be authorized to apply the security deposit of \$800.00 held by the landlords to any monetary award granted pursuant to section 72.

The landlords testified the tenants paid the landlords a security deposit of \$800.00 at the start of the tenancy which the landlords hold. The tenants have not given the landlords permission to apply the security deposit to outstanding rent.

As stated above, section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenants could reasonably anticipate the landlords' claim would be amended to include a request authorizing the landlords to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondents.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlords' application to allow the landlords to request that the security deposit of \$800.00 be applied to any monetary award.

Summary of landlords claim

Further to the above amendments to the landlords' claim, the landlords' claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent	3,095.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$800.00)
Monetary Order Requested	\$2,395.00

Landlords' withdrawal of claim

The landlords withdrew their claim for an order of possession under the One Month Notice pursuant to sections 47 and 55.

Issue(s) to be Decided

Are the landlords entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (Ten-Day Notice) pursuant to sections 46 and 55;
- Authorization to apply the security deposit to the monetary award pursuant to section 72;
- Authorization to recover the filing fee for this application pursuant to section 72;

Background and Evidence

The landlords provided uncontradicted affirmed testimony as the tenants did not appear at the hearing.

The parties entered into 1-year fixed term tenancy agreement beginning December 15, 2018 for monthly rent of \$1,600.00 payable on the first of the month. The tenants paid a security deposit to the landlords at the beginning of the tenancy of \$800.00. The landlords hold the security deposit. The tenants have not provided written authorization to the landlords to apply the security deposit to outstanding rent.

The landlords submitted a copy of the tenancy agreement.

The landlords testified the tenants are currently in arrears of rent of \$3,095.00. The landlords testified that since the issuance of the Notice, the tenants made several payments which were accepted for "use and occupancy only" and outstanding rent accumulated for the month of June 2019. The landlords submitted the receipts they issued for payments on rent as evidence in support of their testimony.

The landlords testified the Ten-Day Notice was personally served by them upon the tenants on May 2, 2019, thereby effecting service that day.

The landlords submitted a copy of the Ten-Day Notice as evidence.

The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of May 11, 2019, corrected to May 12, 2019. The landlords testified the tenants did not pay the rent in full.

The tenants applied to cancel the Notice on May 9, 2019, 7 days after the date of service.

The landlords provided uncontradicted testimony the amount claimed remains unpaid and owing to the landlords.

The landlords submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served.

The tenants continue to occupy the unit.

Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenants were served with the Ten-Day Notice on May 2, 2019 in accordance with the *Act*.

I find the tenants made some payment on the outstanding rent which payments were accepted by the landlords for use and occupancy only. I find the tenants failed to dispute the Ten-Day Notice on May 09, 2019, outside the 5-day period, and did not attend the hearing or submit evidence.

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

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.

As the tenants filed the Application for Dispute outside the 5-day period and have not attended the arbitration, I dismiss the tenants' application to cancel the Notice. Based on the landlords' testimony and evidence including testimony that the tenants continue to reside in the unit, I find the landlords have met the burden of proof on a balance of probabilities that the Notice is proper, and the landlords are entitled to the relief requested.

I therefore grant the landlords an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlords, I grant the landlords a monetary award pursuant to section 67 for outstanding rent in the amount of 3,095.00.

Further to section 72, I award the landlords authority to apply the security deposit to the monetary award.

As the landlords was successful in this application, I award the landlords the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlords a monetary order for **\$2,395.00** calculated as follows:

ITEM	AMOUNT
Award to landlords for outstanding rent	3,095.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$800.00)
Monetary Order	\$2,395.00

Conclusion

I grant the landlords a monetary order in the amount of **\$2,395.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlords an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords may file the order with the Supreme Court of British Columbia to be 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: June 22, 2019

Residential Tenancy Branch