



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LRE, RP, RR, FFL, OPRM-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 landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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;
- an order to compel the landlord to make repairs to the rental unit pursuant to section 33;
- an order to compel the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;

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 tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Is the tenant entitled to orders to have the landlord conduct repairs to the unit and to make emergency repairs for health and safety?

Is the tenant entitled to a reduction in rent for services or facilities agreed upon but not provided?

Is the tenant entitled to an order to suspend or limit the landlords' right to enter?

Background and Evidence

Counsel for the landlord made the following submissions. Counsel submits that the parties entered into a tenancy on May 30, 2018. The monthly rent payable of \$2600.00 is due on the first of each month. The landlord collected and still holds a security deposit of \$1300.00. Counsel submits that the tenant started falling behind in rent in December 2018. Counsel submits that the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 24, 2019. Counsel advised that as of today's hearing the amount of unpaid rent is \$18, 200.00. Counsel submits that the landlord seeks a monetary order for the unpaid rent and filing fee, as well as an order of possession.

The tenant gave the following testimony. The tenant testified that she does not dispute the landlords counsel's submissions. The tenant testified that her husband became extremely ill that resulted in financial hardship for the family. The tenant testified that the unit had significant deficiencies that the tenants spent almost \$15000.00 of their own money to repair. The tenant testified that given time, she will pay the unpaid rent.

Analysis

Section 26(1) of the *Act* establishes that "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."

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.*

I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and although they did apply for dispute resolution to dispute the notice, they did not provide sufficient justification or evidence to have the notice cancelled. Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for \$18200.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. Applying the offsetting provision under section 72 of the Act I order that the landlord retain the \$1300.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$17000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As I have found that the tenancy is over, I dismiss the remainder of the tenants' application as it relates to items only if the tenancy were to continue.

Conclusion

The landlord is granted an order of possession and monetary order of \$17,000.00.

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: June 18, 2019

Residential Tenancy Branch