



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, OLC, PSF, RP, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 17, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order authorizing the Tenants to change the locks - Section 70;
3. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit - Section 70
4. An Order for the Landlord to comply with the Act - Section 62;
5. An Order for the Landlord to provide services or facilities - Section 65;
6. An Order for repairs – Section 32; and
7. An Order to recover the filing fee for this application - Section 72;

The Landlord applied on June 20, 2019 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As all of the Tenants' claims except for the order cancelling the notice to end tenancy and recovery of the filing fee are not related to the primary matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Landlords entitled to an order of possession?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on May 1, 2019 for a fixed term to end April 30, 2020. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. Rent of \$1,900.00 is payable on the first day of each month. The Tenants did not pay rent for June, July and August 2019. The Tenants were given a 10-day notice for unpaid rent dated June 4, 2018 (the "Notice") and setting out unpaid rent of \$1,900.00 due June 1, 2019

The Landlord states that the Tenants were sent the Notice by registered mail on June 4, 2019. The Tenant states that they did not have keys or access to their mailbox and did not learn about the mail until the Tenant went to the post office for other matters. The Tenant states that it made its application to dispute the Notice within 5 days receipt of the registered mail as indicated on the Notice. The Tenants state that they withheld rent for the Landlord's breaches of the tenancy agreement and Act.

The Landlord requests an order of possession for August 15, 2019.

Analysis

Section 26 of the Act provides 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. Based on the Tenants' evidence of withholding rents payable due to the Landlords' breaches of the Act, I find that the Tenants did not have a valid reason for not paying the rent and that the Notice is therefore valid. As the Notice is valid I dismiss the Tenants' claim for its cancellation. As the Tenants have not been successful with this claim I also dismiss the Tenants' claim to recovery of their filing fee.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. As the Notice complies in form and content and as the Tenant's application has been dismissed I find that the Landlord is entitled to an order of possession. I therefore grant an Order of Possession to the Landlord effective 1:00 p.m. on August 15, 2019. As the tenancy will end on August 15, 2019 and based on the agreed facts that no rent has been paid for June, July and August 2019, I find that the Landlord is entitled to \$1,900.00 for June 2019, \$1,900.00 for July 2019 and \$950.00 for August 2019 rent for a total of **\$4,750.00**. As the Landlord's claims are successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,850.00**. Deducting the security deposit plus zero interest of **\$950.00** from that entitlement leaves **\$3,900.00** owed to the Landlords.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on August 15, 2019. The Tenant must be served with this **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.

I order that the Landlord retain the **deposit** and interest of \$950.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,900.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 08, 2019

Residential Tenancy Branch