



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, RP, RR, FFT
MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for an Order for regular repairs, and for a reduction in rent due to repairs, services or facilities agreed upon by not provided.

The Landlord applied for monetary compensation for unpaid rent and filed an amendment to amend the monetary amount claimed and add a monetary claim for damages against the security deposit. Both parties also applied for the recovery of the filing fee paid for each application.

The Tenant and Landlord were both present for the duration of the teleconference hearing. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding each application and a copy of the other party’s evidence. The Tenant also confirmed receipt of the amendment filed by the Landlord on August 1, 2019. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be

dismissed. As such, the parties were informed at the hearing that the Tenant's claims for a reduction in rent and for regular repairs, as well as the Landlord's claim for damages would be dismissed, with leave to reapply.

This decision will address the dispute over the 10 Day Notice, the Landlord's claim for unpaid rent, and the request of both parties for the recovery of the filing fee. The parties are at liberty to reapply for the remainder of the claims.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on August 1, 2018. Rent in the amount of \$2,700.00 is due on the first day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$200.00 was paid at the start of the tenancy.

The Tenant provided testimony that she rented the whole house for the amount of \$2,700.00 with the understanding that she would be renting out the lower level unit of the home to another tenant. The Tenant stated that she only needed the upstairs area of the home but that the Landlord was adamant that she rent the whole home, so he did not have to manage two separate rental units. The Tenant stated that she felt that she did not have an option so rented the whole house with plans to rent out the lower level unit.

The Tenant referenced a letter submitted in her evidence dated August 1, 2019. In the letter, a witness states that they were present when the Tenant first went to look at the rental unit and noted that the Tenant had inquired about just renting the upstairs level unit.

The Tenant submitted that it was her understanding that the lower level unit was a legal suite and able to be rented. She stated that she had someone move into the unit, but it did not work out and there was a period of time where it was not rented. She stated that she had realized that the lower level unit did not have proper ventilation for the stove which she notified the Landlord of on May 24, 2019.

As such, the Tenant stated that she was not comfortable renting out the lower level unit anymore, mainly due to safety concerns regarding the stove which the Landlord did not address. The Tenant also noted that she realized that anyone else living in the home would be a roommate and not a tenant.

The Landlord testified that he served the Tenant with a 10 Day Notice on July 4, 2019 by posting the notice in her mailbox. The Tenant confirmed receipt of the 10 Day Notice on or around July 6, 2019.

A copy of the 10 Day Notice was submitted into evidence and states that \$2,200.00 was unpaid as due on July 1, 2019. The effective end of tenancy date of the 10 Day Notice was stated as July 14, 2019.

The Landlord stated that the Tenant paid \$1,600.00 for June and July 2019 rent, leaving an amount of \$1,100.00 owing for each month. He stated that a payment of \$1,100.00 was made on July 24, 2019 and that \$2,700.00 was paid for August 2019. As such, the Landlord confirmed that he is seeking \$1,100.00 for unpaid rent for June 2019 which has not yet been paid.

The Landlord submitted e-transfer banking information that shows payments of \$1,600.00 for June and July 2019. The Tenant submitted e-transfer banking information that confirms a payment of \$1,100.00 on July 24, 2019 and notes that this is for the balance of July 2019 rent.

The Tenant did not deny that \$1,100.00 was still owing for June 2019 rent, but stated that once the issue with the lower level unit is addressed it will be paid. The Tenant noted that she now has a roommate in the lower level of the home although that person does not use the stove due to the safety concerns.

The Tenant also testified as to other issues in the rental unit, some of which she stated that Landlord has addressed and others that she stated have not been addressed, including issues with rats, ants and repairs needed on the deck. The Tenant submitted evidence regarding repairs and other issues in the rental unit.

The Landlord denied that he pressured the Tenant into renting the whole house and instead stated that the tenancy agreement was signed for the whole house as agreed upon by both parties. The Landlord stated that he is willing to provide until September 30, 2019 for the Tenant to move out should the 10 Day Notice be upheld.

Analysis

As stated in Section 46(4) of the *Act*, a tenant has 5 days to dispute a 10 Day Notice or to pay the outstanding rent. As the Tenant received the notice on or around July 6, 2019 and applied to dispute the notice on July 8, 2019, I find that the Tenant applied within the allowable timeframe. Therefore, the matter before me is whether the 10 Day Notice is valid.

When a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The parties agreed that the Tenant paid \$1,100.00 less for June 2019 rent, although they did not agree as to the reasons why. While the Tenant provided testimony and evidence regarding repairs issues in the home, I do not find any provision under the *Act* that would allow the Tenant to withhold rent for the repair issues as described.

Section 33 of the *Act* outlines the process for completing emergency repairs and deducting the amount spent on completion of the repairs should the landlord not complete the repairs and/or reimburse the tenant. However, I do not find any evidence before me that would establish that there were emergency repairs in the rental unit that required the Tenant to pay for repairs.

I also note the defining of “emergency repairs” as provided in Section 33(1) of the *Act* as follows:

- (1) In this section, "**emergency repairs**" means repairs that are
 - (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

As such, I am not satisfied that the Tenant had any reason to withhold rent due to repairs.

The Tenant also testified as to pressure from the Landlord to rent the whole house despite only needing the upstairs of the house. However, I find the tenancy agreement to be compelling evidence as to what was agreed upon. I find that on July 3, 2018 both parties signed their agreement for the house to be rented for a monthly rent amount of \$2,700.00.

Therefore, I find that this is the amount owed to the Landlord on the first day of each month as stated in Section 26 of the *Act* and as confirmed by the tenancy agreement. A tenancy agreement is a legal document in which the parties agree to the terms of the tenancy.

I do not find that there is any provision for not paying the full rent should the Tenant not have anyone else residing in the home to share the rent payments. The tenancy agreement was signed solely between the Tenant and Landlord and therefore it is the Tenant's responsibility to pay the full rent amount each month.

Accordingly, I find that the Tenant still owes \$1,100.00 for rent for June 2019 and therefore find that the rent was not paid in full within 5 days of receipt of the 10 Day Notice. As such, I find that the Landlord had cause to serve the 10 Day Notice and that it was not cancelled with the payment and rent. Therefore, I find that the 10 Day Notice is valid and Tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply.

As the Tenant was not successful, I decline to award the recovery of the filing fee.

Upon review of the 10 Day Notice, I find that the form and content comply with Section 52 of the *Act*, and therefore find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. I accept the Landlord's testimony that he is willing to provide until September 30, 2019 for the Tenant to move and therefore grant an Order of Possession for 1:00 pm on this date.

Regarding the Landlord's application for unpaid rent, I find the Landlord is entitled to compensation in the amount of \$1,100.00 which is the amount that remains unpaid for June 2019. As the Landlord was successful with the application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord may retain a portion of the security deposit towards compensation owed and therefore I do not find it necessary to grant a monetary order. Instead, the security deposit amount held by the Landlord is now \$150.00 after a deduction of \$1,100.00 for unpaid rent for June 2019 and \$100.00 for the recovery of the filing fee.

Conclusion

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **September 30, 2019 at 1:00 pm**. This Order must be served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 67 and 72 of the *Act*, I award the Landlord **\$1,200.00** for unpaid rent for June 2019 and for the recovery of the filing fee. The Landlord may retain this amount from the security deposit which means that the security deposit held by the Landlord is now **\$150.00**.

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: August 26, 2019

Residential Tenancy Branch