



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, RP, RR, OPR, MNR, FF

Introduction

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

The Tenants applied on July 22, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit - Section 70;
3. An Order for repairs - Section 32;
4. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 30, 2019 with amendments made August 21 and September 23, 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 Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that it made an amendment to the application for dispute resolution on September 23, 2019 to add another 10-day notice to end tenancy for unpaid rent issued September 21, 2019 and to increase the monetary amount of unpaid rent claimed.

Rule 4.3 of the Residential Tenancy Branch Rules of Procedure provides that amended applications should be submitted to the RTB as soon as possible and not less than 14 days before the hearing. Rule 4.2 of the RTB Rules provides that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the original application was made, the application may be amended at the hearing. As the Landlord only made the last amendment three days before the hearing I find that this amendment is too late and the additional notice to end tenancy may not be added as a matter for this dispute. I note as well that the Landlord has applied too early on this 10-day notice for unpaid rent. As the rent owing has increased I amend the Landlord's application to allow for the increase of the amount of unpaid rent that has increased since the original application.

It is noted that the same person who attended the hearing on behalf of the Tenants at a previous hearing as a translator attended this hearing as a friend or agent and as a translator (the "Agent"). It is noted that the previous hearing resulted in a decision dated June 7, 2019 and dismissed the Tenants' application with leave to reapply given the language limitations of the translator. This limitation was raised with the Agent who clarified that it is a friend of the Tenants, has knowledge of the dispute, is acting as a translator and while the Tenants were out of country, monitored the Tenants mail delivery. The Agent confirmed that the Tenants spoke no English. The Agent could be reasonably understood at this hearing however additional time was taken to ensure that the Agent was able to translate the Landlord's evidence and the questions of the

Arbitrator to both Parties. The Agent was able to convey the Tenant's evidence in English.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to orders in relation to the landlord's entry, repairs and a rent reduction?

Are the Tenants entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

IS the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 20, 2018. Rent of \$3,500.00 is payable on the 20th day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$1,750.00 and an additional month of rent for the last month of the tenancy of \$3,500.00. The Tenants received the Landlord's amended application dated August 21, 2019. No rents were paid for June, July, August and September 2019. The Tenants have not moved out of the unit.

The Tenants state that the rent for September 2019 is covered by the additional month's rent paid at the outset of the tenancy. The Landlord states that this additional rent paid at the outset was used by the Landlord to offset the unpaid rent for June 2019.

The Landlord states that on July 20, 2019 the Landlord served the Tenants with a 10-day notice to end the tenancy for unpaid rent (the "July Notice") by posting the July Notice on the door. The July Notice sets out unpaid rent of \$3,500.00 due July 20, 2019.

The Landlord states that on August 21, 2019 the Landlord served the Tenants with another 10-day notice to end the tenancy for unpaid rent (the "August Notice") by posting the August Notice on the door of the rental unit. The Parties agree that the August Notice was signed by the Landlord, dated August 21, 2019, set out the dispute address, sets out unpaid rent of \$7,000.00, and sets out the effective move out date as August 31, 2019. The Tenants did not dispute the August Notice and the Agent states that the Tenants are waiting to see when they have to move out of the unit and are prepared to do so for October 2019. The Agent was not able to enter into a settlement agreement to obtain an agreed move-out date for the Tenants.

Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the agree facts that rent is payable on the 20th day of each month and as the July Notice was not issued on any day after the 20th of July 2019 I find that the Landlord is unable to end the tenancy based on the July Notice. I therefore cancel that Notice. As the Tenants' application to cancel the July Notice has been successful I find that the Tenants are entitled to recovery of the **\$100.00** filing fee.

Section 46 of the Act provides that a tenant who receives a 10-day notice to end tenancy for unpaid rent has 5 days to dispute the notice. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Given the undisputed evidence that the Tenants received the August Notice, did not dispute the August Notice and have not moved out of the unit I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the agreed facts that no rents were paid for June, July, August, and September 2019 I find that the Landlord has substantiated an entitlement to **\$14,000.00**. Deducting the security deposit of **\$1,750.00** plus zero interest and the additional rent of **\$3,500.00** paid by the Tenants at the outset of the tenancy and setting off the Tenants' entitlement of **\$100.00** from the Landlord's entitlement leaves **\$8,650.00** owed to the Landlord.

Section 1 of the Act provides that "**security deposit**" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Based on the agreed facts that the Landlord collected, in addition to the security deposit, an amount equivalent to a full month's rent, I find that the Landlord breached the Act in relation to restrictions on the security deposit amount. For this reason, I decline to award recovery of the filing fee to the Landlord.

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 the tenancy has ended and as the claims in relation to the landlord's entry, repairs and a rent reduction are only relevant to an ongoing tenancy I dismiss these claims. If the Tenants experienced a loss during the tenancy the Tenants remain at liberty to make an application for dispute resolution in relation to those losses.

Conclusion

The July Notice is cancelled.

I grant an Order of Possession to the Landlord. 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 \$1,750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$8,650.00**. 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: September 27, 2019

Residential Tenancy Branch