



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46.

Both landlords and Tenant JA attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant JA testified, and the landlords confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and tenant JA confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue

Tenant LA is tenant JA's eleven-year old daughter. All parties agreed that she is not properly a party to this action, despite her name appearing on the tenancy agreement. The parties agreed that she should be removed as a party to this application.

Accordingly, pursuant to Rule of Procedure 4, I order that the notice of dispute resolution be amended to remove tenant LA as a party.

Issue to be Decided

Are the tenants entitled to a cancellation of the Notice?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting February 27, 2019. Monthly rent is \$1,700.00 plus monthly utilities of \$120.00. These are payable on the first of each month. The tenant paid the landlords a security deposit of \$850.00. The landlords still retain this deposit.

The landlords testified, and tenant JA agreed, that the tenant was personally served with the Notice on July 4, 2019. It set out an effective date of July 14, 2019. The Notice stated that \$1,680.00 in rent was owed as of July 1, 2019.

Tenant JA testified that he filed this application for dispute resolution on July 8, 2019. The landlords testified that they did not receive a copy of the application for dispute resolution until July 12, 2019. The landlords argue that the tenant filed the application for dispute resolution late, and that he should be precluded from obtaining the relief sought.

The landlords testified, and tenant JA agreed, that the tenant failed to pay monthly rent and utilities as follows:

July 2019	\$1,700.00
August 2019	\$1,820.00
September 2019	\$1,820.00
Total	\$5,340.00

Tenant JA testified that these arrears remain outstanding.

Tenant JA testified that he requested that the landlords issue him the Notice as proof he could provide to receive additional income assistance from a government agency.

Tenant JA testified that certain repairs were required to the rental unit, including:

- 1) Repairs to the refrigerator;
- 2) Installation of a door-knob to the front door; and
- 3) Re-leveling of the back stairs.

Tenant JA submitted no documentation in support of the need for these repairs.

The landlords denied that such repairs were necessary.

At the hearing, the landlords testified that, if the tenant's application is dismissed, they would like an order of possession effective September 15, 2019.

Analysis

Timeliness of the Claim

I find that the Notice was served on the tenant on July 4, 2019. Sections 46(4) and (5) of the Act states:

Landlord's notice: non-payment of rent

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that tenant JA filed this application for dispute resolution on July 8, 2019, within five days of being served with the Notice. Accordingly, I do not find that he is conclusively presumed to have accepted that the tenancy end. I find that he is permitted to have brought this application. Service of the application for dispute resolution within five days of service of the Notice is not a requirement of section 52 of the Act..

Validity of Notice

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlords must satisfy me that the tenant has failed to pay rent for July, August, and September 2019. The landlords testified that the tenant has failed to do so. Tenant JA agreed that this was the case, and did not contest the amount of arrears the landlords set out.

I understand the tenant's argument to be that because the landlord failed to repair the rental unit as requested, he should be given additional time in which to pay the rent.

A landlord's failure to make repairs is not a valid basis on which to withhold rent. Section 26(1) of the Act states:

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 find that tenant JA has failed to pay monthly rent and utilities for July, August, and September 2019. I find that there is no basis under the Act for this non-payment.

On this basis I find that the Notice was validly issued, and that the tenant owes the landlord \$5,340.00 in rent and utilities for July, August, and September 2019.

Section 55 of the Act states:

55 (1) 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.

I find that the Notice complies with section 52.

Accordingly, I grant the landlord an order of possession against the tenant effective September 15, 2019.

I decline to make any order regarding the repayment of the outstanding rent, as no application for repayment is before me.

Repairs

As I have granted an order of possession, there is no need for me to address the tenant's application that repairs be done to the rental unit.

Conclusion

I dismiss the tenant's application to cancel the notice without leave to reapply.

I dismiss the tenant's application for repairs to be done to the rental unit.

I grant an order of possession to the landlord effective 1:00 pm on September 15, 2019. Should the tenant fail to comply with this order, it may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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: September 4, 2019

Residential Tenancy Branch