



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, OPC, CNC, CNR, OLC, RP, RR, MNDC, ERP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package,

the amendment to an application for dispute dated August 15, 2019, the amendment to an application for dispute dated September 3, 2019, the landlord's submitted documentary evidence via Canada Post Registered Mail. The tenants confirmed that no documentary evidence was submitted. Both parties confirmed the tenants served the landlord with their notice of hearing package, an amendment to the application for dispute dated August 30, 2019 and their submitted documentary evidence via Canada Post Registered Mail. I accept the undisputed testimony of both parties and find that both parties have been served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset, the applications for both parties were clarified. The landlord seeks an order of possession as a result of a 10 Day Notice; as a result of a 1 month notice for cause; a monetary claim for unpaid rent, compensation and recovery of the filing fee for an amended total of \$27,277.33.

The tenants have requested an order for the landlord to cancel a 1 month notice dated June 2019; an order cancelling the 10 Day Notice for Unpaid Rent; an order for the landlord to comply; an order for the landlord to make repairs, an order authorizing the tenant to reduce rent for repairs, an order for repairs; a monetary claim for money owed or compensation for an amended amount of \$13,107.75 and recovery of the filing fee. Extensive discussions with the tenants resulted in the tenants' request for repairs to be cancelled as those issues have now been resolved. The tenants have also failed to provide sufficient details of their request(s) for an order for the landlord to comply; a monetary order for money owed or compensation (\$370.00); recovery for the cost of emergency repairs (\$325.00). On this basis, these portions of the tenants' claims are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The tenants' application shall proceed on the request(s) to cancel the 1 month notice, to cancel the 10 Day Notice and recovery of the filing fee.

After 84 minutes, the hearing was adjourned due to a lack of time. Both parties were cautioned that no new evidence was to be submitted, nor would it be accepted. A copy of the new notice of an adjournment shall be attached to this interim decision with the new call in information details.

On October 29, 2019, the hearing was reconvened with both parties via conference call.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to an order of possession and a monetary order for unpaid rent, compensation and recovery of the filing fee?

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenant's entitled to an order cancelling the 10 Day Notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 15, 2019. The monthly rent is \$2,250.00 payable on the 1st day of each month. A security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 were paid.

The landlord seeks an order of possession for unpaid rent and for cause, an amended monetary claim of \$27,227.58 which consists of:

\$6,650.00	Unpaid Rent, 3 months, July, August, September
\$300.00	Water Bill, 4 months, June, July, August, September
\$2,438.50	Toilet Replacement X2
\$435.15	Repair Broken Sprinkler Pipe
\$1,257.09	Tenants removed toilets
\$5,689.38	Cedar Shed House
\$1,072.96	Overholding Landlord Accommodations
\$2,734.50	Landlord Meals
\$6,650.00	Overholding, Compensation, October, November, December

The tenants seek an order to cancel the 1 month notice and the 10 day notice, a monetary claim for \$13,107.25 for compensation and recovery of the filing fee.

The tenants' monetary claim consists of:

\$553.74	Moving costs, loss of government paid, unpack of boxes and loss of insurance
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\$183.75	Snow Removal during move-in
\$9,000.00	reimbursement of rent paid, 4 months at \$2,250.00, April to June
\$2,250.00	Reimbursement of Security and Pet Damage Deposits
\$200.00	Cleaning at move-in, 10 hours X \$20/hr.
\$370.26	Window cleaning, loss of work 11 hours X \$33.66 hr.
\$300.00	bought and installed new toilets
\$250.00	labour, supplies re: fence posts

Both parties confirmed the landlord served the tenant with a 1 month notice dated June 20, 2019. The 1 month notice sets out an effective end of tenancy date of July 31, 2019 and the reason it was given as "Tenant is repeatedly late paying rent."

The details of cause listed are:

Rent Payment March 4, 2019- Utilities owing for June and July
April 1, 2019-
May 6, 2019 & May 10, 2019
June 3, 2019 & June 10, 2019

Both parties also confirmed the landlord served to the tenants a 10 Day Notice for Unpaid Rent dated July 2, 2019 which states in part that the tenants failed to pay rent of \$2,250.00 that was due on July 1, 2019.

Analysis

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, extensive discussions between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The landlord agreed to cancel the application for dispute filed.

The tenants agreed to cancel the application for dispute filed.

Both parties agreed to mutually end the tenancy on November 1, 2019, by which time the tenants will have vacated the rental unit.

The landlords agreed to cancel the 1 month notice to end tenancy issued for cause dated June 20, 2019 and the 10 Day Notice to End Tenancy for Unpaid Rent dated July 2, 2019.

Both parties agreed that the tenants shall pay to the landlord, \$9,375.00 for rental arrears for the period July, August, September and October 2019 forthwith.

Both parties agreed that upon the tenancy coming to an end, the landlord shall return to the tenants, the \$1,125.00 security deposit.

Both parties agreed that the tenants will forfeit the \$1,125.00 pet damage deposit to the landlord.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on November 1, 2019. The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary order in the landlords' favour in the amount of \$9,375.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant(s) do not abide by the terms of the above settlement. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. I note an exception to the above monetary claim when the tenancy is at an end

that the landlord may offset the monetary claim granted by withholding the security deposit amount in partial satisfaction of the landlord's claim.

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: October 29, 2019

Residential Tenancy Branch