



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR MNDC LRE FF
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 15, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. Both parties confirmed receipt of each other’s application packages. The Landlord stated that, although they got the Notice of Hearing, they did not get the Tenant’s evidence package. The Tenant provided proof of service and tracking information showing he sent each of the Landlords his evidence by registered mail on September 25, 2019. Pursuant to section 88 and 90 of the Act, I deem these packages were served 5 days after they were mailed, on September 30, 2019. The Tenant confirmed receipt of the Landlords’ evidence package.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and

that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.;

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$2,325.00 was to be paid on the first of each month. Both parties also agreed that the Landlords currently holds a security deposit in the amount of \$1,165.00. The Landlords stated that the Tenant failed to pay any rent since May 2019, and now owes \$11,625.00 in rent for these months (5 x \$2,325.00).

The Tenant acknowledged getting the 10 Day Notice. The Landlords stated they posted it to the Tenant's door on August 9, 2019, which indicated that \$6,975.00 was outstanding for rent at that time.

The Tenant did not dispute that rent was unpaid. The Tenant stated that in late May 2019, he started having issues with ants in the house. The Tenant does not feel the Landlord adequately dealt with this issue. The Landlords stated that they inspected the unit a couple of times and never found any issue to the extent the Tenant is claiming. The Tenant also complained of issues with the parking, the furnace, the dishwasher, the sinks, and general conflict with the Landlords. The Landlords feel the Tenant is looking for reasons not to pay rent.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Tenant acknowledges getting the 10 Day Notice but was not sure of the date. The Landlords stated that it was posted on the door on August 9, 2019. Pursuant to section 88 and 90 of the *Act*, I deem this Notice was served 3 days after it was posted, on August 12, 2019. The Landlords stated that no rent was paid after the Notice was issued, and the Tenant did not dispute this fact, but rather presented reasons why he is unhappy with the rental unit. I find there is insufficient evidence to show that the Tenants had a legal right to withhold the rent, and the undisputed testimony of both parties is that rent has not been paid since May of 2019, leaving 5 months currently owing.

Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent. If the Tenants had issues they wanted fixing, they should have filed an application for dispute resolution, rather than unilaterally decide they were going to withhold rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenants had a right under the *Act* to deduct all or a portion of rent, I find that the Tenants' Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

In light of my finding that the tenancy is ending on the basis of unpaid rent, I find it has not been necessary for me to consider the Tenant's request for an order cancelling the One Month Notice.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay rent for June- October 2019 (\$2,325.00 x 5).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$11,625.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$1,165.00)
TOTAL:	\$10,560.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlords are granted a monetary order pursuant to Section 67 in the amount of **\$10,560.00**. This order must be served on the tenants. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: October 15, 2019