



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNDL-S MNRL-S FFL
For the tenant: CNR

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 12, 2019 (10 Day Notice), for a monetary order for damage to the rental unit site or property, for authorization to keep all or part of the tenant's security deposit and pet damage deposits, and to recover the cost of the filing fee. In addition, the details provided by the landlord clearly indicate they are also seeking unpaid rent. The tenant applied to cancel the 10 Day Notice.

The tenant and the landlords attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

As I find the landlords' application clearly indicates that they are seeking unpaid rent of \$2,200.00 for the months of September, October and November of 2019 in the amount of \$6,600.00, I amend the landlords' application pursuant to section 64(3)(c) of the Act to include unpaid rent or utilities as I find a claim for damages to be premature. I grant the landlords leave to reapply for damages; however, as the tenant continues to occupy the rental unit, the tenant has until the end of the tenancy to repair any damages to the rental unit.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

The tenant's filing fee was waived, and the landlords paid a filing fee, the latter of which I will address later in this decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 21, 2019 and is scheduled to revert to a month to month tenancy after May 31, 2020. The parties confirmed that the tenant paid a \$1,100.00 security deposit and a \$1,100.00 pet damage deposit.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that they were served with the 10 Day Notice on September 12, 2019. The tenant applied to dispute the 10 Day Notice on September 17, 2019. The 10 Day Notice indicates that \$2,200.00 in unpaid rent was due September 1, 2019, and includes an effective vacancy date of September 22, 2019. The tenant confirmed that they did not pay any

rent for September, October or November 2019 and continue to occupy the rental unit and that the tenant does not intend to pay the landlords.

The landlords are seeking an order of possession as soon as possible, the unpaid rent for September, October and November 2019, which totals \$6,600.00, plus the \$100.00 filing fee. The landlords stated that as there is damage to the rental unit, they do not wish to offset the unpaid rent claim with the security deposit and pet damage deposit (combined deposits), and will wait for the tenant's written forwarding address before dealing with the tenant's combined deposits of \$2,200.00.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. In fact, page two of the 10 Day Notice reinforces this by indicating to the tenant that the Notice may be disputed for specific reasons such as proof rent was paid, etc. In the matter before me, the tenant admitted that no rent has been paid for September, October and November 2019, and as a result, I find the 10 Day Notice is valid and having reviewed the 10 Day Notice, I find it complies with section 52 of the Act. Therefore, I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

Given the above, I find the landlords have met the burden of proof and therefore, I grant the landlords **\$6,600.00** in unpaid rent and loss of rent as follows:

1. Unpaid September 2019 rent, \$2,200.00
2. Loss of October 2019 rent, \$2,200.00
3. Loss of November 2019 rent, \$2,200.00

Order of Possession – The effective vacancy date of the 10 Day Notice was September 22, 2019. The effective vacancy date of the 10 Day Notice has passed, the tenant continues to occupy the rental unit and admitted to not paying rent for the months claimed. Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlords an order of possession. Therefore, based on the above, I grant the landlords an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on September 22, 2019.

As the landlords' application had merit, I grant the landlords the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act.

Pursuant to sections 67 and 72 of the Act, I grant the landlords a monetary order in the amount of **\$6,700.00**, comprised of \$6,600.00 in unpaid rent and loss of rent, plus the \$100 filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence. The landlords' application is fully successful.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court. The tenancy ended September 22, 2019.

Pursuant to sections 67 and 72 of the Act, I grant the landlords a monetary order in the amount of \$6,700.00, comprised of \$6,600.00 in unpaid rent and loss of rent, plus the \$100 filing fee. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2019

Residential Tenancy Branch