



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FFT LRE OLC FFL MNRL-S OPR

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

This hearing was originally set to deal with the tenant's application only, but it came to my attention during the hearing that the same parties had a second matter set for a hearing on January 10, 2020 at 11:00 a.m. to deal with the landlord's application pertaining to this same tenancy for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

BB ("landlord") represented the landlord in this hearing. Both parties appeared, and with their consent, both applications were dealt with today. Accordingly the hearing scheduled for January 10, 2020 is cancelled, and attendance of either party is not required for that appearance. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlord and tenants were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenants were served with the 10 Day Notice, with an effective date of November 13, 2019, on November 2, 2019, by way of posting the 10 Day Notice on the tenants' door on November 2, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on November 5, 2019, 3 days after posting.

Although the landlord had applied for a monetary Order of \$9,000.00 in their initial claim, since they applied another \$900.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$9,000.00 to \$9,900.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the landlord entitled to monetary compensation for unpaid rent?

Are the parties entitled to recover their filing fees?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in January of 2011. Both parties confirmed that there is no written tenancy agreement for this tenancy. The tenants testified that

monthly rent is set at \$600.00, payable on the first of the month, while the landlord testified that monthly rent was set at \$900, payable on the first of every month. Both parties testified that the monthly rent has not changed since the beginning of the tenancy. No security deposit was paid for this tenancy.

The landlord issued a 10 Day Notice to End Tenancy on November 2, 2019 for the tenants' failure to pay the outstanding rent as of November 1, 2019 in the amount of \$9,000.00.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent for the months of February 2019 through to December 2019, for a total of \$9,900.00 in unpaid rent, plus the filing fee.

The tenants dispute the landlord's testimony that rent is set at \$900.00. The tenants testified that rent has always been set at \$600.00, which the tenants paid in cash. The tenants testified that the landlord has never issued them a receipt for their rent payments, and therefore they have no proof any payments made. The tenants admit that no rent had been paid for the months of November or December 2019.

Analysis

The definition of a "tenancy agreement" is outlined in the following terms in section 1 of the *Act*:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

A tenancy can exist in the absence of a written tenancy agreement. I find that in this case, it was undisputed by both parties that a tenancy exists between the parties, although the actual amount of the monthly rent is disputed.

In light of the fact that no written tenancy agreement exists, and as I am not satisfied that the landlord had provided sufficient evidence to support that monthly rent is set at \$900.00, I accept the monthly rent to be set at the lower amount of \$600.00 as confirmed by the tenants.

Section 26 of the *Act*, in part, states as follows:

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 have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. Although the amount the tenants owe is disputed by the tenants, the tenants admit that they have not paid the November 2019 rent in full as required by the *Act*.

The tenants failed to pay the November 2019 rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. I find that the tenants did not have permission to withhold or deduct any rent, and accordingly I find that the tenants have failed to pay the outstanding rent as required by the *Act*. On this basis, I dismiss the tenants' application to cancel the 10 Day Notice dated November 2, 2019.

Section 55(1) of the *Act* reads as follows:

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.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although I find that the amount of outstanding rent to be disputed on the 10 Day Notice, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. However, I must still consider the validity of the 10 Day Notice, and whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*,

which states 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.”

As it was undisputed that the tenant did owe outstanding rent at the time the 10 Day Notice was issued, I find that the 10 Day Notice is still valid despite the disputed amount indicated on the 10 Day Notice. The tenants’ application to dispute this 10 Day Notice does not relieve the tenants from their responsibility to pay the outstanding rent, nor do I find that the tenants were in possession of any previous orders that had allowed them to withhold or deduct this rent. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia. may enforce this Order in the Supreme Court of British Columbia.

The tenants did not dispute the fact that they withheld rent in the amount of \$1,200.00 for the months of November and December 2019. I find that the tenants did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord’s application for \$1,200.00 in unpaid rent. I am not satisfied that the landlord had provided sufficient evidence to support the remaining portion of their claim for the outstanding rent for this tenancy, and accordingly I dismiss the remaining portion of the landlord’s application for unpaid rent with leave to reapply.

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

As this tenancy has come to an end, and as the tenants were unsuccessful with their application, the remaining portions of the tenants’ application is dismissed without leave to reapply.

Conclusion

I dismiss the tenants’ entire application without leave to reapply. I find that the landlord’s 10 Day Notice to be valid and effective as of November 15, 2019. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenants and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a \$1,300.00 Monetary Order in favour of the landlord for recovery of the unpaid rent for November and December 2019, as well as the filing fee. The remaining portion of the landlord's application is dismissed with leave to reapply.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 11, 2019

Residential Tenancy Branch