



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS CNR OLC FFL MNRL-S OPR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46; and,
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- 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.

Preliminary Matter: Dismissal of agent

The parties both testified that DL was named a party as an agent of the landlord. The landlord testified that DL is no longer their agent. Accordingly, DL was dismissed as a party to these claims pursuant to section 62(4)(b) of the *Act*.

Preliminary Matter: Withdrawal of notice to end tenancy

The landlord testified that the notice to end tenancy posted on the tenant's door on or about October 21, 2019 was withdrawn. Accordingly, this notice to end tenancy is cancelled pursuant to the agreement of the parties. The proceedings regarding the notice to end tenancy dated November 6, 2019.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's Ten-Day Notice pursuant to section 46?

Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to an order of Possession for non-payment of rent pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started in December 2017 and the monthly rent 2200 per month per month.

The landlord testified that the tenant's rent payment in October 2018 was deficient by \$176.14 and the payment on August was deficient \$675.00. The landlord testified that no rent payments have been made in September 2019 or thereafter. The landlord testified that rent payments were made by electronic transfer and the landlord provided copies of electronic payments. The electronic payments show that the tenant paid \$1,525.00 on August 2, 2019.

The tenant argued that she made the rent payments for August 2019 and September 2019 by cash. The tenant did not have receipts and she testified that the landlord did not provide receipts. The landlord denies the receipt of any cash payments. The tenant

does not recall the payment from October 2018. The tenant admits that the rent was not paid in October 2019 or thereafter.

The landlord testified that she served the Ten-Day Notice on November 6, 2019 by posting the notice on the tenant's door. The tenant acknowledged service of the Ten-Day Notice.

Analysis

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,200.00, on time and in full each month.

I find that the tenants have not paid the entire rent for August 2019 or any rent thereafter. Specifically, I find that the tenants paid \$1,525.00 in rent on August 2019 and that the balance of the August 2019 rent of \$675.00 has not been paid. I also find that the tenant has not paid any rent thereafter. Accordingly, I dismiss the tenant's application to cancel the Ten-Day Notice.

Although the parties have provided conflicting testimony regarding the rent history, I find that, on the balance of probabilities the payment history provided by the landlord is correct because it is corroborated by the electronic payment history. However, I find that the landlord has not provided sufficient evidence to establish that the tenant's October 2018 payment was deficient.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act* and the landlord has established on the balance of probabilities that the unpaid rent stated in the Ten-Day Notice was owing as stated in the notice. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$7,275.00 for unpaid rent from August in 2019 to the date this application was filed in November 2019 (\$675.00 for August 2019, \$2,200.00 for September 2019; \$2,200.00 for October 2019; and \$2,200.00 for November 2019).

I also find that the Tenant owes \$851.64 for overholding the rental unit for the period of December 1, 2019 to December 12, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on November 19, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on December 12, 2019.

Residential Tenancy Policy Guideline #3 states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit from December 1, 2019 until the date of the hearing on December 12, 2019, I find that the landlords are entitled to overholding rent in the amount of \$851.64 (12 days at the per diem rate of \$70.97).

Since this tenancy is not continuing, I dismiss the tenant's application for an order allowing the tenant to assign or sublet pursuant to section 62(4)(b) as this claim is now moot.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee pursuant to section 72 of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of **\$8,226.64**, calculated as follows.

<u>Item</u>	<u>Amount</u>
August rent unpaid	\$675.00
September rent unpaid	\$2,200.00
October rent unpaid	\$2,200.00
November rent unpaid	\$2,200.00

December overholding damages	\$851.64
Filing fee	\$100.00
Total	\$8,226.64

Conclusion

The tenant's application is dismissed.

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. 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.

I grant the landlord a monetary order in the amount of **\$8,226.64**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to 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: December 14, 2019

Residential Tenancy Branch