



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DHAP DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, OLC, RP, LRE, MNRT, FFT
For the landlord: OPR, MNR, FFL

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords;
- an order requiring the landlords to comply with the Act, regulations, or tenancy agreement;
- an order requiring the landlords to make repairs to the rental unit;
- an order suspending or setting conditions on the landlords' right to enter the rental unit;
- a monetary order for the costs of making emergency repairs; and
- to recover the cost of the filing fee.

The landlords applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenants;
- a monetary order for unpaid rent;
- authority to retain the tenants' security deposit; and
- to recover the cost of the filing fee.

The tenants' representative, and the landlords, who were the owners of the limited corporation, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

Preliminary and procedural matter #1:

At the beginning of the hearing, the tenants' representative requested that the hearing be adjourned as he had pneumonia. I asked the tenants' representative how long he had pneumonia and he replied that he had the illness for a month.

Upon my inquiry, the tenants' representative said that the male tenant, CA, his son, was ill and had been at the hospital the night before and could not attend the hearing.

Upon my inquiry, the tenants' representative said that the female tenant, LA, his wife, had a shoulder replacement two weeks earlier and could not attend the hearing.

The tenants' representative did not provide any medical evidence in support of his request for an adjournment. The landlord submitted that they had seen CA the day before the hearing in the doorway of the rental unit.

The criteria for granting an adjournment are set out in Rule 7.9 of the Residential Tenancy Branch Rules of Procedure (Rules), as follows:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

After considering all of the criteria for an adjournment, and hearing from the landlords who opposed the representative's request for an adjournment, the representative was advised that I was denying his request for an adjournment.

I find there would be a greater prejudice to the landlords due to the Notice and documentary evidence alleging that the tenants had not paid rent of \$1,600.00 for November and December 2019, and only \$400.00 of \$1,600.00 for October 2019.

Further, I find the tenants and their representative would have been able to supply medical evidence of their inability to attend a hearing and they did not. I note that the hearing lasted for 42 minutes and the tenants' representative contributed to the hearing the entire time, without coughing or apparent difficulty to speak.

Given the above, I find the tenants' representative and the tenants provided insufficient evidence to support their request and the hearing continued without an adjournment being granted.

Preliminary and procedural matter #2:

I have determined that the portion of the tenants' application dealing with their request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, an order requiring the landlord to make repairs to the rental unit, an order suspending or setting conditions on the landlord's right to enter the rental unit, and for a monetary order for the costs of making emergency repairs is unrelated to the primary issue of their dispute of the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dealt only with the issue of the Notice. A decision on this portion of the tenants' Application will be addressed in this Decision.

Preliminary and procedural matter #3:

The landlords submitted that they had not received the tenants' evidence. Upon my inquiry, the tenants' representative said he delivered it to the landlords' mother.

The landlords submitted that their mother is elderly, is not mobile, does not speak English, and would not have answered the door.

I note that the tenants' representative confirmed that he did not serve the landlords at their service address listed on the written tenancy agreement.

I find the tenants failed to serve the landlords their evidence in a manner as required by the Act and I declined to consider the tenants' documentary evidence.

The landlords submitted without dispute that they served their evidence personally to each tenant. I have accepted the landlords' evidence for consideration.

I have reviewed the evidence of the parties before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and to recovery of the filing fee?

Are the landlords entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that a tenancy began on January 23, 2019, with a monthly rent of \$1,600.00, due on the first day of the month, and a security deposit of \$800.00 being paid by the tenants.

This tenancy beginning on January 23, 2019, was with another tenant, CrA, the brother and son of the current tenants. In his place, CrA allowed the current tenants into the rental unit and he moved out. The landlords had the current tenants sign the tenancy agreement under the same terms and conditions. The landlords submitted a full copy of the written tenancy agreement.

Pursuant to the Rules, the landlords proceeded first in the hearing to explain and support their Notice.

The landlords' evidence as well as the tenants' evidence reflects that the tenants were served with a Notice, dated October 23, 2019, listing unpaid rent of \$2,200.00 as of September 1, 2019.

The landlords submitted that on November 6, 2019, they served the tenants with another Notice, which listed unpaid rent of \$2,800.00 owed as of November 1, 2019.

The landlords provided a copy of the second Notice.

The tenants' representative agreed the first Notice had been served, but not the second Notice.

The landlords said that the tenants' representative was not present when they served the second Notice and would not be a witness to the service. I note that one of the owners testified she witnessed her sister, the other owner, serve the Notice.

The landlord asserted that since the issuance of the Notice, the tenants have not paid any rent, and that they owe unpaid rent of \$6,000.00, comprised of a rent deficiency of \$1,200.00 for October, unpaid rent of \$1,600.00 for November and December 2019, each, and now \$1,600.00 for January 2020.

While the landlords' original monetary claim is \$2,800.00, they amended their application to increase the monetary claim to \$6,000.00.

In response to my inquiry, the landlord said that they usually have to attend the rental unit to collect the rent when it is available and that it is usually not in the full amount.

Tenant's representative's response-

In response, the tenant's representative said that the male tenant has offered the landlords the rent payments, but that they have refused the rent payments as they want the rental unit vacant.

Landlords' rebuttal-

The landlords queried why they would not want to collect rent, that the tenants' representative was not telling the truth, and that he was not personally knowledgeable of the situation.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were personally served two 10 Day Notices, that the tenants owed the unpaid rent listed by virtue of the written tenancy agreement, and did not pay the outstanding rent within 5 days of service.

I do not find the tenants' representative testimony that the landlord refused the rent payments to be believable or reasonable. I find the landlords provided first hand evidence and the tenants' representative provided hearsay or evidence to which he had no knowledge.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlords are entitled to and I grant an order of possession of the rental unit effective 2 days after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement, such as bailiff costs, are recoverable from the tenants.

I find the landlords have provided sufficient evidence to show that the tenants owed and failed to pay rent in the amount of \$6,000.00, through January 2020. I further find it likely that the landlords will not be able to re-rent the rental unit for the month of January 2020, and so that amount is granted.

I therefore find the landlords are entitled to a monetary award of \$6,100.00, comprised of unpaid rent of \$6,000.00 through January 2020 and the \$100.00 filing fee paid by the landlords for this application.

I direct the landlords to retain the tenants' security deposit of \$800.00 in partial satisfaction of their monetary award of \$6,100.00.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$5,300.00.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Tenants' application-

As I have granted the landlords' application for an order of possession of the rental unit and monetary order pursuant to the landlords' Notice, I dismiss the tenants' application for cancellation of the Notice, without leave to reapply.

As I have granted the landlords' application for an order of possession of the rental unit, I dismiss the tenants' request for an order requiring the landlords to comply with the Act, regulations, or tenancy agreement, an order requiring the landlords to make repairs to the rental unit, and an order suspending or setting conditions on the landlords' right to enter the rental unit, without leave to reapply, as the tenancy is ending.

I dismiss the tenants' claim for the cost of emergency repairs, with leave to reapply.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenant's application to cancel the Notice and for orders for the landlords is dismissed without leave to reapply as I have granted the landlords' application to enforce the Notice.

I have dismissed the tenants' claim for the cost of emergency repairs, with leave to reapply.

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: January 2, 2020

Residential Tenancy Branch