



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, MNDCT, OLC, LRE

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 11, 2019 ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70.

"Landlord SHR" did not attend this hearing, which lasted approximately 32 minutes. The two landlords, landlord PR ("landlord") and "landlord SUR," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she had permission to represent landlord SHR as an agent at this hearing.

All three landlords are collectively referred to as "landlords" in this decision.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. The landlords were in receipt of the tenant's amendment to his application, to add claims to cancel the 10 Day Notice, an order to comply, and an order to restrict entry. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application and the landlords were duly served with the tenant's amendment. Both parties confirmed that they were ready to proceed with this hearing.

The landlord testified that the tenant was served with the landlords' 10 Day Notice on November 11, 2019, by way of posting to his rental unit door. The tenant confirmed receipt of the 10 Day Notice on November 13, 2019. Both parties agreed that the effective move-out date on the notice is November 17, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on November 13, 2019. The tenant confirmed that he filed his application to dispute the 10 Day Notice on November 13, 2019.

At the outset of the hearing, the tenant confirmed that he did not want to pursue his monetary application for \$7.50 because he had cashed his own money order and that was the fee for the money order. I notified the tenant that this portion of his application was dismissed without leave to reapply, so he would not be able to pursue this application in the future, and he confirmed his understanding of same.

Preliminary Issue - Amendment to Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include January 2020 rent of \$750.00. The landlords filed their application on December 10, 2019, before January 2020 rent was due.

The landlords requested this amendment during the hearing and the tenant did not object to it. I find no prejudice to the tenant in making this amendment, as he attended the hearing, he had an opportunity to object to the amendment, and he provided submissions regarding the January 2020 rent.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, even though a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claim for increased rent.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover the filing fee for their application?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order restricting the landlords' right to enter the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2015. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords seek an order of possession based on the 10 Day Notice. The landlords seek a monetary order of \$2,250.00 for unpaid rent and to recover the \$100.00 application filing fee.

Both parties agreed that the landlord issued the 10 Day Notice for unpaid rent of \$750.00 due on November 1, 2019. Both parties agreed that the tenant failed to pay rent of \$750.00 to the landlords for November 2019. Both parties agreed that the tenant also failed to pay rent of \$750.00 for December 2019 and \$750.00 for January 2020 to the landlords.

The tenant seeks to cancel the landlords' 10 Day Notice. He claimed that the landlords told him at the beginning of the tenancy that he could pay his rent four to five days late. The landlord denied this allegation and stated that the tenancy agreement indicates that the rent is due on the first of each month.

The tenant said that the landlords caused problems when the tenant asked for a signed rent receipt for October 2019 rent. He claimed that he was going to mail a money order for \$750.00 to the landlords for November 2019 rent but he decided not to because the landlords were purposely banging and hammering above his bedroom for the last two months, since November 2019. He said that he suffered a loss of quiet enjoyment but did not have time to file an application for that. He stated that he cashed his own money order for November 2019 rent and held on to the cash for six weeks but did not pay the landlords the rent. The tenant agreed that he did not pay rent for November 2019, December 2019, or January 2020 to the landlords because of the banging and hammering noises.

The tenant seeks an order for the landlords to provide him with signed rent receipts for when rent is paid. He seeks an order that the landlords issue a proper notice for unpaid rent on the RTB form like they did on November 11, 2019, rather than the handwritten letter they previously issued to him on November 7, 2019.

The tenant seeks an order that the landlords provide proper notice before entering his rental unit. He stated that on November 7, 2019, the landlords banged on his door so hard that it opened but was stopped by the chain on the door. He maintained that he called the police and the police told the landlords that they had to give proper notice to end the tenancy, not a handwritten letter.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant agreed with what the landlord said. The tenant failed to pay the full rent due on November 1, 2019, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, as per section 26 of the *Act*, the tenant did not provide a valid reason to deduct any amounts from rent, such as emergency repairs under section 33 of the *Act* or an order from an Arbitrator. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent or to provide a valid reason to deduct amounts from his rent, within five days led to the end of this tenancy on November 23, 2019, the corrected effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by November 23, 2019. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. Therefore, the tenant's application to cancel the landlords' 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply.

Both parties agreed that the tenant failed to pay rent of \$750.00 for each month of November 2019, December 2019 and January 2020, to the landlords, totalling \$2,250.00. Accordingly, I find that the landlords are entitled to rental arrears of \$2,250.00 from the tenant.

The landlords continue to hold the tenant's security deposit of \$375.00. Over the period of this tenancy, no interest is payable on the security deposit. Although the landlords did not apply to retain the security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$375.00 in partial satisfaction of the monetary award.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

As this tenancy is ending, I dismiss the remainder of the tenant's application for an order for the landlords to comply and to restrict the landlords' right to enter the rental unit, without leave to reapply. These orders only relate to an ongoing tenancy.

At the outset of the hearing, I notified both parties that my decision would be provided in written reasons and not orally during the hearing. At the end of the hearing, the tenant stated that he would be filing for a judicial review of my decision. I asked how he was filing for judicial review if he did not know the outcome of my decision and he said that he would read my decision, provide it to his lawyer and then file for judicial review. The tenant also stated that he would be filing for a loss of quiet enjoyment claim against the

landlords in the future. With no questions or other comments before I closed the hearing, I thanked both parties for attending and concluded the hearing.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain the tenant's entire security deposit of \$375.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$1,975.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenant's entire application is dismissed without 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 03, 2020

Residential Tenancy Branch