



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, 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 tenants' application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 12, 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 unit, pursuant to section 70.

"Tenant CT" did not attend this hearing, which lasted approximately 45 minutes. The landlords' agent ("landlord") and tenant AA ("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 he had permission to represent the individual landlord owner and the landlord company, both named in these applications (collectively "landlords"). The tenant confirmed that she had permission to represent tenant CT as an agent at this hearing (collectively "tenants").

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. Both parties confirmed that they were ready to proceed with this hearing.

The landlord testified that the tenants were served with the landlords' 10 Day Notice on December 12, 2019, by way of posting to their rental unit door. The tenant confirmed receipt on the same date. Both parties agreed that the effective move-out date on the notice is December 22, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlords' 10 Day Notice on December 12, 2019. The tenant confirmed that she filed the tenants' application to dispute the 10 Day Notice on December 16, 2019.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the spelling of the tenant's surname. Both parties consented to this amendment during the hearing.

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 and February 2020 rent, totalling \$3,400.00. The landlords filed their application on December 29, 2019, before January and February 2020 rent were due.

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

The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, even though a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants 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?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Are the tenants 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 August 1, 2019. Monthly rent in the amount of \$1,700.00 is payable on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenants and the landlords continue to retain these deposits. A written tenancy agreement was signed by both parties. The tenants continue 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 \$5,100.00 for unpaid rent from December 2019 to February 2020, and to recover the \$100.00 application filing fee.

Both parties agreed that the landlords issued the 10 Day Notice for unpaid rent of \$1,700.00 due on December 1, 2019. Both parties agreed that the tenants failed to pay rent of \$1,700.00 to the landlords for December 2019. Both parties agreed that the tenants also failed to pay rent of \$1,700.00 for January 2020 and \$1,700.00 for February 2020 to the landlords.

The tenants seek to cancel the landlords' 10 Day Notice. The tenant said that the landlords offered for her to break the fixed term tenancy agreement period earlier, and they would pay her two months' rent compensation. She stated that she did not move out early because the landlords only gave her less than a month to move. The tenants seek an order to comply and to restrict the landlords' right to enter the unit. The tenant stated that she did not want the landlords to interfere with her moving and packing, while she is attempting to vacate the rental unit.

The tenants seek a monetary order of \$12,300.00. The tenants seek the return of their security and pet damage deposits, totaling \$1,700.00. The tenants seek \$2,000.00 for damages caused to their personal items by insects in the unit. The tenants provided photographs of the insects. The tenants seek moving costs of \$3,500.00, which have not yet been incurred. The tenant said that she did not provide the quote from the moving company because she has not yet received it. The tenants seek three months' rent of \$5,100.00 because the landlord asked them to break the fixed term tenancy agreement period early.

The landlords dispute the tenants' entire application. The landlord stated that he made two offers, with an end date, for the tenants to vacate the rental unit before the end of the fixed term. He said that he asked the tenants to leave by the end of December 2019, and he would pay them two months' rent compensation and return their security and pet damage deposits. He maintained that the owner of the unit, who lives on the upper floor above the tenants, had issues with the tenant and wanted her to leave, so he convinced the owner to pay the tenants out. He confirmed that the tenants refused the offers and did not vacate. He said that he told the tenant she still has to pay her rent if she was living at the rental unit, but she failed to do so. He testified that if the tenants had issues with pest control, they should have informed the landlords.

Analysis

Landlords' Application

The landlord provided undisputed evidence at this hearing, as the tenant agreed with what the landlord said. The tenants failed to pay the full rent due on December 1, 2019, within five days of receiving the 10 Day Notice. The tenants 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 tenants 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 tenants to pay the full rent or to provide a valid reason to deduct amounts from rent, within five days led to the end of this tenancy on December 22, 2019, the effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by December 22, 2019. As this has not occurred, I find that the landlords are entitled to an Order of Possession effective at 1:00 p.m. on February 29, 2020, against the tenants, pursuant to section 55 of the *Act*. The landlord requested an order of

possession, effective at 1:00 p.m. at the end of February 2020, stating that if the landlords received an award for February 2020 rent, the tenants were entitled to possession until the end of the month. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. Therefore, the tenants' application to cancel the landlords' 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenants 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 tenants who do 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 tenants failed to pay rent of \$1,700.00 for December 2019, January 2020, and February 2020, to the landlords, totalling \$5,100.00. Accordingly, I find that the landlords are entitled to rental arrears of \$5,100.00 from the tenants.

The landlords continue to hold the tenants' security deposit of \$850.00 and pet damage deposit of \$850.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security and pet damage deposits, totalling \$1,700.00, 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 tenants.

Tenants' Application

As this tenancy is ending, I dismiss the remainder of the tenants' 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.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' monetary application of \$12,300.00 without leave to reapply.

I find that the tenants failed to provide documentary proof in the form of invoices, receipts, estimates, quotes, or other such documents to prove moving costs of \$3,500.00, which have not been incurred, and the \$2,000.00 for damages to personal items, due to insects. I find that the tenants failed to accept the landlords' offers to move out early and receive rent compensation, so they are not entitled to three months' rent of \$5,100.00, for the landlords asking them to end the fixed term tenancy early. I have offset the tenants' security and pet damage deposits, totaling \$1,700.00, against the unpaid rent owed to the landlords, as noted above.

Conclusion

I grant an Order of Possession to the landlords effective at 1:00 p.m. on February 29, 2020. Should the tenants 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 tenants' entire security and pet damage deposits, totalling \$1,700.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$3,500.00 against the tenants. Should the tenants 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 tenants' 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: February 20, 2020

Residential Tenancy Branch