



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REG INVESTMENT LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, OPU-DR, FFL, CNR, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent and utilities 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.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and 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. The parties acknowledged receipt of evidence submitted by the other.

Issues(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is either party entitled to the recovery of the filing fee for their application?

Background and Evidence

Both parties agree to the following. The tenant has been living in the suite for nineteen years. The parties signed a fixed term tenancy agreement on August 1, 2019 that was to run until December 31, 2019. The parties further signed a two-month extension that was to expire on February 28, 2020. Rent in the amount of \$1230.00 is payable in advance on the first day of each month. The tenant paid a security deposit of \$615.00 which the landlord still holds.

The landlord's agent gave the following testimony. PL testified that the tenancy agreement did not include utilities. PL testified that as of February 28, 2020 the amount of unpaid utilities is \$2254.78. WL testified that he served the tenant a demand letter for the unpaid utilities on February 28, 2020. WL testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 3, 2020 for the unpaid rent for March and the unpaid utilities. PL testified that the tenants did not pay the rent for March or April 2020. WL denies ever signing a document cancelling the 10 Day Notice to End Tenancy and further denies even seeing the tenant on March 10, 2020. The landlords request a monetary order as follows:

Item	Amount
Unpaid Rent for March 2020	\$1230.00
Unpaid Rent for April 2020	1230.00
Utilities	2254.78
Filing Fee	100.00
Total Monetary Order	\$4814.78

The tenant gave the following testimony. The tenant testified that the landlord has fabricated their entire claim so that they can evict her and rent the unit out at a higher rate. The tenant testified that she has never paid for utilities in the nineteen years that she has lived on the property. The tenant testified that she paid March's rent in cash on February 29, 2020 and that WL signed a paper verifying that and cancelling the notice to end tenancy. The tenant testified that she has April's rent whenever they want to pick it up.

Analysis

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.*

WL disputed the document that the tenant relies on. WL testified that he not only did not sign the document on that day, he wasn't even at the property. The veracity of the document is concerning as there is no other supporting witnesses or documentation to verify the cancelling of the notice. In addition, WL and PL were both very clear and concise in their testimony that the payment made on February 29, 2020 was for rent due on February 1, 2020. In the tenant's own testimony, she confirmed that she's not paid the rent for April 2020. In addition, the tenant was adamant that utilities were included in her tenancy agreement, yet the landlords have submitted four consecutive original tenancy agreements that clearly show that utilities were not included. Based on the testimony of the landlords and their supporting documentation, I find that the tenant has not paid the rent for March and April 2020 as required under section 26 of the Act.

Further to the above:

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.

I hereby grant the landlord an order of possession as I find the notice complies with section 52 of the Act. The tenant has not been successful in their application and I therefore dismiss their application in its entirety without leave to reapply.

In this case, this required the tenants to vacate the premises by the corrected date of March 16, 2020. As that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55(1)(a) of the Act, which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord \$2460.00 in unpaid rent.

Regarding the unpaid utilities, section 46(6) of the Act addresses them as follows:
46(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

WL testified that he placed a demand letter for unpaid utilities on February 28, 2020 in the tenant's mailbox and then issued a notice to end tenancy for unpaid rent or utilities four days later. I find that the landlord is premature in this portion of their application as the tenant was only given four days before a notice to end tenancy was given to address the claim of \$2254.78, accordingly; I dismiss this portion of the landlord's application with leave to reapply.

Using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. The landlord is also entitled to the recovery of the filing fee of \$100.00.

The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

Item	Amount
Unpaid Rent for March 2020	\$1230.00
Unpaid Rent for April 2020	1230.00
Filing Fee	100.00

Less Deposits	-615.00
Total Monetary Order	\$1845.00

The landlord is granted an order of possession and a monetary order for \$1845.00. The landlord may retain the security deposit.

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: April 23, 2020

Residential Tenancy Branch