



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

landlord application: OPC, OPR, MNDL-S, MNRL-S, MNDCL-S, FFL
tenant application: CNR

Introduction

The tenant filed an Application for Dispute Resolution (the “tenants Application”) on February 6, 2020 seeking an order to cancel the ‘10 Day Notice to End Tenancy for Unpaid Rent or Utilities’ (the “10 Day Notice”) issued by the landlord on February 2, 2020.

The landlord filed an Application for Dispute Resolution (the “landlord Application”) on March 26, 2020. The landlord seeks an order of possession for the rental unit, to recover the money for unpaid rent, and to recover money for the damage caused by the tenants. The landlord also claims a loss of rental income from other building occupants leaving due to the actions of the tenants.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on April 16, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenants with the notice of this hearing. This means the landlord must provide proof that the document has been served in a verified manner allowed under section 89 of the *Act* and I must accept that evidence. The landlord stated in the hearing that on February 2, 2020 they served the notice of this hearing and related evidence on the door of the tenants who are still residing in the rental unit.

I accept the landlord’s undisputed testimony regarding the service of the hearing documents and find, pursuant to section 90 of the *Act*, that the tenant is deemed to have received the hearing package on February 5, 2020.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the 10-Day Notice pursuant to section 46 of the *Act*?

If the tenants are unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the residential tenancy agreement. Both parties signed this agreement on February 28, 2019, and the tenancy started on March 1, 2019. The monthly rent was \$950.00 per month, payable on the first of each month. The tenants paid a security deposit of \$475.00 on the date of signing. A pet deposit amount of \$475.00 would become payable when the tenants acquired a pet. A signed two-page addendum forms part of the tenancy agreement.

The landlord provided a copy of three notices to end tenancy issued to the tenants on separate dates:

1. A One Month Notice to End Tenancy for Cause (the "One Month Notice") was signed by the landlord on December 26, 2019 and served to the tenants on December 27, 2019. The grounds for this Notice are: repeated late payment of rent; significant interference by the tenants with other occupants or the landlord; and impact to the quiet enjoyment and security of another occupant.
2. A 10 Day Notice to end Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was signed by the landlord on February 2, 2020 and served on the tenants the same day. The landlord issued this 10 Day Notice for the unpaid \$950.00 rent that was due on February 1, 2020. The landlord served this document by leaving it in the tenants' mailbox at the rental unit, giving the tenants 10 days' notice to move out by February 15, 2020. The tenants subsequently applied to cancel this 10 Day Notice on February 6, 2020 – this is within the allotted 5-day statutory timeframe set out in the *Act*.
3. A 10 Day Notice to end Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was signed by the landlord on March 30, 2020 and served on the tenants the same day. This was issued for the unpaid \$950.00 rent that was due on March 1, 2020. A 'Proof of Service' provided document shows a witness statement attesting to the attaching of this 10 Day Notice to the tenant's door on March 30.

The landlord provided a worksheet dated April 2, 2020 to show outstanding monetary amounts. For each of February, March and April 2020, the tenants owe \$950 rent. The landlord also recorded the \$100.00 filing fee for dispute resolution. The total claim is \$2,950.00. On the sheet, the landlord claims this is for “unpaid rent/utilities” and “keeping returning all or part of deposits.”

In the landlord Application, the landlord stated that the tenants have caused interference and affected the security of other building residents and the landlord. The landlord makes a claim for loss of rent stemming from the end of tenancy for two other occupants. Additionally, the landlord claims for property damage; however, they have not completed a full inspection to assess the value.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I am satisfied that when the landlord issued the 10 Day Notice the tenants owed \$950.00 in rent for the month of February 2020. I am satisfied the landlord issued the 10 Day Notice on February 2, 2020, and the tenants received it on that same day. There is no evidence contrary to that of the landlord presented in the hearing. This finding is also supported by the fact the tenant applied to dispute the 10 Day Notice on February 6, 2020.

The tenants failed to attend the hearing to pursue their application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants' application to cancel the 10 Day Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10 Day Notice complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements of form and content. The landlord is entitled to an order of possession on the effective date.

A tenancy can only end once. I find there is no need to consider the One Month Notice served to the tenants on December 26, 2019, and a subsequent 10 Day Notice served to the tenants on March 20, 2020. The tenant did not apply to cancel these notices.

On the issue of monetary compensation, there is nothing in the tenants' submitted documentary evidence to address this remaining issue. Therefore, I find as fact that the tenants held occupancy of the unit through the months in which they did not pay rent: February, March and April 2020. By February 2, 2020, when the landlord issued the 10 Day Notice, the tenants had not paid rent for that month. The non-payment continued for the following two months and there is no evidence contrary to that of the landlord on these points. Bank records showing the non-payments is reliable evidence in this regard.

There are also separate claims for loss of income from other vacating occupants from the same building, and a claim for damages. I link the claim for lost rental income directly to the landlord's application for possession for cause. The landlord has provided statements from other residents and copies of the rental agreements with those tenants to verify the legitimacy of the claim. I am confining this issue to the immediate order of possession for unpaid rent -- this is the subject matter of this hearing, where the tenants have cross-applied to cancel this 10 Day Notice. The application for order of possession from the One Month Notice is dismissed; however, I am granting leave to the landlord to reapply on this issue of compensation for loss of rental income.

On the issue of damages to the unit itself, in this hearing the landlord has not provided ample evidence to quantify the monetary amount claimed, \$3,000. The landlord's statement on the application is: "I can see they've done at least \$3000 worth of damages to the doors and windows of the property." The landlord has not provided evidence to support this claimed amount; as such, I dismiss this claim and grant the landlord leave to re-apply for this compensation. This is an issue more properly addressed at the end of the tenancy.

I find the tenants were obligated to pay \$2,850.00, as per the tenancy agreement. Section 26 of the *Act* requires a tenant to pay the rent when it is due under the tenancy agreement whether the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has the right under the *Act* to deduct all or a portion of the rent. There is no provision in the *Act* allowing the tenants to withhold the payment of rent in full while still maintaining occupancy.

Based on the evidence of the landlord, and their oral testimony in the hearing, I find the claim for rental amounts for three months is valid, and the landlord shall receive compensation for that amount. This amount, as provided on the landlord's worksheet, is \$2,850.00.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

As the applicant tenants did not attend to present their Application, I dismiss the tenants' application for a cancellation of the 10 Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$2,950.00 for unpaid rent and a recovery of the filing fee for this hearing application. The landlords are provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 28, 2020

Residential Tenancy Branch