



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL, CNR, OLC, 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 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;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord originally applied through the Direct Request Process, but an adjudicator made a decision that the matter be heard by way of a participatory hearing. 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.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenant moved into the building in 2007. The landlord testified that the tenant became the caretaker in 2012. As part of the working agreement, the tenant moved into a larger unit; the unit the tenant presently lives in. The landlord testified that the monthly rent for that unit is \$1250.00 per month for which the tenant pays the landlord \$625.00 and the tenant receives a taxable benefit of \$625.00 as part of his working arrangement. The landlord collected and still holds a security deposit of \$500.00.

The landlord testified that the tenant was injured and stopped working in September 2018. The landlord testified that the tenant still received the taxable benefit as part of his "Work Safe BC" claim and benefits. The landlord testified that the tenant didn't make any payments towards his rent until March 2019. The landlord testified that they have worked closely with Work Safe BC and the tenants claims adjuster to help him understand that his rent since September 2018 is \$1250.00 per month, and not the \$625.00 the tenant believes it to be. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 17, 2020 for \$12,200.00 in unpaid rent. The landlord testified that as of today's hearing the amount of unpaid rent is \$11,400.00. The landlord requests a monetary order for the unpaid rent and the filing fee, and an order of possession.

The tenant and his advocate gave the following testimony and submissions.

The advocate made the following submissions. The advocate submits that they do not dispute that there is unpaid rent but dispute the amount. The advocate submits that the landlord provided confusing and contradictory amounts that were due but using the landlord's calculations the tenant only owes \$2650.00. The advocate submits that the tenant is in the position to pay that amount in full today. The advocate submits if the tenant makes that payment his tenancy is to continue and that he can resume his position as caretaker.

The tenant gave the following testimony. The tenant testified that he believed and still believes his rent payable each month is \$625.00. The tenant submits that using that amount, he has in fact over paid the landlord since September 2018 and that there is no

rent owing. The tenant testified that his tenancy should continue, and that no money should be owing to the landlord.

Analysis

Both parties agreed that the value associated with this unit was \$1250.00 per month. Although the parties had an unusual and somewhat complicated payment structure; in the tenant's own documentation, it states that 50% of the fair market value would be deducted as a taxable benefit and the remainder to be paid by the tenant. Furthermore, I find that the tenant was still receiving that benefit through his disability claim but not using that benefit to pay the landlord the agreed upon market value of the unit. Based on the tenant's own documentation I find that the amount of rent payable per month is as claimed by the landlord \$1250.00 per month. As a result of that finding, I further find that the tenant is in arrears \$11,400.00 in rent and that the landlord is entitled to that amount. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Based on the above, I hereby dismiss the tenant's application to dismiss the 10 Day Notice. The tenant has not been successful in his application, accordingly; I dismiss it in its entirety without leave to reapply.

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 find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia. The tenancy is over.

Conclusion

The tenants application is dismissed in it entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. 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 issue a \$11,000.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and also allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent	11,400.00
Filing Fee	100.00
Less Deposit	-500.00
Total Monetary Order	\$11,000.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 *Residential Tenancy Act*.

Dated: April 28, 2020

Residential Tenancy Branch