



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This review hearing was convened in response to a review consideration decision rendered pursuant to section 79 of the Residential Tenancy Act (the “Act”) on February 7, 2020 to reconsider the monetary order issued to the tenants, following a hearing on January 27, 2020.

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the Act;
- a monetary order for unpaid rent and for compensation for damages caused by the tenants, pursuant to sections 26 and 67 of the Act;
- authorization to retain all or a portion of the tenants’ pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- recovery of the filing fee, pursuant to section 72 of the Act.

Landlord CS and agent WS and tenant GG attended the review hearing. Each were given an opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the notice of review hearing and the evidence provided by the tenants. In accordance with sections 88 and 89 of the Act, I find that both parties were duly served with the notice of review hearing and the evidence provided by the tenants.

Preliminary issue – service of new evidence by the landlord

The landlord's agent WS (the landlord) affirmed that document "LL 3 PAGES MAR 11 BY HAND" was not served to the tenants. This document is excluded per section 3.15 of the Rules of Procedure.

Preliminary Issue - Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims to obtain an order of possession and a monetary claim for unpaid rent are not sufficiently related to the monetary claim for a compensation for damages related to unpaid municipal fines.

The landlord's monetary order claim regarding municipal fines rest largely on facts not germane to the question of whether there are valid grounds for issuing an order of possession and a monetary award for unpaid rent. I exercise my discretion to dismiss the landlord's claim for a monetary order regarding municipal tickets with leave to reapply.

Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession for unpaid rent?
2. a monetary award for unpaid rent?
3. retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested?
4. recover the filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the landlord's submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained to the attending parties it is their obligation to present their evidence.

The parties agreed the monthly tenancy started in 2005. Monthly rent is \$1,970.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$500.00 was collected by the landlords and they still hold it in trust.

The landlord affirmed she served the 10 Day Notice to End Tenancy (the Notice) in person on December 11, 2019 and the tenants refused to sign it. The tenant affirmed he received the Notice on December 16 or 17, 2019.

A copy of the Notice was submitted into evidence. The Notice is dated December 11, 2019. It mentions the tenants are in arrears for \$1,675.00 due on December 01, 2019. The effective date of the Notice is December 21, 2019.

The landlord provided testimony and evidence that the tenant has paid rent in installments through the duration of this fifteen-year tenancy. A portion of the rent is paid through a third party and the tenant makes additional payments throughout the month.

The parties dispute the value of the arears at the time the Notice was issued. The landlord's application states the rent owing is more than \$500.00. The landlord submitted a monetary order (RTB form 37) dated January 13, 2020 for \$345.00. In his application the landlord also states: "Bank statements screenshots uploaded for past 8 month. The summary shows the balance carried each month along the way. The amount stated on 10 days notice does not include the \$540 dollar owing before May."

The landlord submitted into evidence bank statements for the period of April to December 2019 indicating the tenants make up to three payments per month to the landlord. The landlord has circled values to indicate they relate to rent for this tenancy. No ledger or statement of account specific to this tenancy agreement was provided.

The landlord affirmed the tenants had a balance of \$110.00 on October 31, 2019. In November 2019 the tenants paid a total of \$1,375.00 in installments. On November 30, 2019 the tenants were in arrears for \$705.00. The tenants paid \$500.00 on December 11 (shortly after the Notice was served), \$300.00 on December 16 and \$205.00 on December 30, 2019. The landlord also received a \$1,000.00 installment from a third party on behalf of the tenants in December 2019. The tenants are in arrears for \$670.00 as of December 30, 2019.

The landlord submitted a receipt for use and occupancy dated January 02, 2020. It states:

This letter is a receipt of the rent money deposited after the 10 Days notice Dispute.

1. Government rent cheque for Jan 2020 \$1000
2. \$205 Deposit by [anonymized] on Dec 30, 2019
3. \$605 Deposit by [anonymized] on Jan 02, 2020

The acceptance of this money is for use of occupancy only.

A second letter signed by the landlord on February 10, 2020, states:

This letter is a receipt of the rent money deposited after the 10 Days notice Dispute.

1. Rent \$1025 + 600 for Feb on Feb 03, 2020

The acceptance of this money is for use of occupancy only.

The tenant affirmed the landlord reduced the rent due in November by \$700.00 because of the repairs the tenant did in the rental unit. The tenant submitted into evidence a text message the landlord sent on November 22, 2019. The message states: "He said he has already reduced \$500 off this month plus almost \$200 waved from previous month that's already \$700 taken off, so no more rent off". The landlord agreed he gave the tenant a \$700.00 credit in November.

The tenant affirmed he paid sometime in November 2019 the remaining balance of rent owed, which was \$5.00, and he did not get a receipt. The tenant affirmed he did not have any arrears on November 30, 2019. The tenant affirmed he paid \$500.00 on December 11, \$300.00 on December 16 and \$205.00 on December 30, 2019.

The tenant submitted a letter dated February 19, 2020 in which he affirms there are no arrears. The tenant also submitted copies of the following deposits receipt:

- \$420.00 and \$340.00 on January 16, 2020
- \$600.00 and \$1,025.00 on February 01, 2020
- \$345.00 on February 15, 2020

Analysis

I am dividing the analysis of this application in two topics.

Notice and Order of Possession

I have reviewed all the documentary evidence and find the tenants were served with the Notice on December 16, 2019 in accordance with sections 88 (a) of the Act. I find the tenants disputed the Notice within the timeframe of section 46(4)(b) of the Act.

The testimony provided by both parties, the bank statements provided by the landlord for the period of April to December 2019 indicate the tenants do not have a history of paying the rent in full on the first of the month. The landlord issued the Notice on December 11, 2020. The testimony and documentary evidence demonstrate the tenants have a history of being in arrears on the 11th day of the month. There is no evidence the landlord enforced the provision of the tenancy agreement which requires rent to be paid in full on the first of the month prior to December 11, 2019. The tenants have been relying on paying rent in installments since at least April 2019.

The landlord has not been enforcing his right to receive payment in full on the first of the month. The legal doctrine of estoppel is a concept that restricts a party from relying on its full legal rights if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to enforce the right previously waived or not enforced.

In the March 16, 2020 decision from the British Columbia Supreme Court, *Guevara v. Louie*, 2020 BCSC 380, Justice Sewell writes:

[65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore*, 2005 SCC 38 at para. 51:

...When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[66] The concept of estoppel was also described by the British Columbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith*, 2010 BCCA 394:

...it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English

Court of Appeal in *Habib Bank* and, as we read the decision, accepted by that Court in *Peyman v. Lanjani*, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

Notwithstanding the lack of evidence to substantiate the tenants were in arrears of \$1,675.00 on December 1, 2019 as the Notice states, the landlord is estopped from enforcing the provision of the tenancy agreement that rent is due in full on the first of the month by their past conduct of accepting installment payments of rent.

The landlord is required to provide reasonable notice to the tenants of their intention to reassert their right to be paid rent in full on the first of the month pursuant to the tenancy agreement.

I dismiss the landlord's application for an order of possession.

Monetary award claim

Section 59(2)(b) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Procedural fairness requires the respondent be informed of the value of the monetary claim and how it was arrived at. Furthermore, Rule 3.7 requires evidence to be organized and legible.

The landlord's application does not present a coherent accounting of his monetary claim for unpaid rent. The application states the landlord is seeking \$500.00 (the value of the security deposit) because the tenant owes at least this much. The monetary worksheet states the landlord is seeking \$345.00. The additional documentary evidence of bank statements is not organized in such a way as to support the claim for \$500.00 or \$345.00. I cannot determine from the evidence and testimony how much the tenant may or may not owe the landlord.

I find the landlord has failed to provide full particulars and organized evidence of his monetary claim, thus I dismiss the landlord's application for a monetary order.

Conclusion

I dismiss without leave to reapply the landlord's application for an order of possession and for a monetary award for unpaid rent.

As the landlord was not successful in his application, he is not entitled to recover the filing fee for this application from the tenants.

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 15, 2020

Residential Tenancy Branch