



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, LRE, OLC, OPR, OPE, MNRL, MNDL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 19, 2020 for:

1. An Order for more time to apply for a cancellation of a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 46;
3. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70; and
4. An Order for the Landlord’s compliance.

The Landlord applied on April 25, 2020 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. A Monetary Order for damages to the unit - Section 67.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants confirm that their application for dispute resolution was not given to the Landlord.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. As the Tenants did not give the Landlord copy of its application, I dismiss the application. It is noted that during a tenancy a tenant has ongoing rights in relation to entries and compliance with the Act. The Tenants remain at liberty to make an application in relation to the Landlord's entry and compliance.

The Tenants confirm receipt of the Landlord's application for dispute resolution, the notice of hearing and the Landlord's evidence by email.

The Parties do not dispute that on March 18, 2020 the Landlord gave the Tenants, in person, a 10 day notice to end tenancy for unpaid rent. The Parties agree that the primary matter to be considered is whether the tenancy should end for unpaid rent.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the tenancy has not yet ended, I consider the Landlord's claim for damage to the unit to be premature and also consider that the claim for damages to the unit is not related to the matter of unpaid rent. I therefore dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

IS the Landlord entitled to unpaid rent?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on February 3, 2020. Rent of \$900.00 is payable on the first day of each month. No

security deposit was collected. On March 18, 2020 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Notice sets out that the Tenants failed to pay \$2,250.00 in unpaid rent due March 16, 2020. The Tenants did not dispute that notice and did not pay the amount of unpaid rent indicated on the Notice.

The Landlord claims an order of possession for as soon as possible.

The Landlord states that at some point during the beginning of the tenancy Tenants offered to pay the Landlord \$700.00 for rent. The Landlord states that this amount was not accepted by the Landlord at the time as the Landlord chose to wait for the Tenants' disability cheque that was going to be received on the 22nd of each month in order to assist the Tenants. The Tenant states that for some reason it believes that it paid this amount to the Landlord in cash and that the Landlord did not provide a receipt.

The Parties agree that no other rents were offered or paid. The Landlord claims unpaid rent of \$650.00 for February 2020 and \$900.00 for each of March and April 2020 rent. The Landlord does not seek rent for May 2020.

Analysis

Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the agreed facts that the Tenants did not dispute the Notice, as the time for disputing the Notice has expired and as the Tenants have not moved out of the unit, I find that the Landlord has substantiated an entitlement to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the

regulations or the tenancy agreement. Based on the agreed facts of the amount of rent payable and that the Tenant has not paid the rent for March and April 2019, I find that the Landlord has substantiated an entitlement to **\$1,800.00**. As the Tenant gave vague evidence of payment of \$700.00 towards rent, I prefer the Landlord's evidence that the Tenants only offered to pay this amount and that the Landlord did not accept this rent at the time but expected it to be paid later. I find therefore that the Landlord did not waive any entitlement for the payment of February 2020 rent. I find that the Landlord has substantiated unpaid rent of **\$650.00** for February 2020 for a total entitlement of **\$2,450.00**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court subject to the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*) issued March 30, 2020.

I grant the Landlord an order under Section 67 of the Act for **\$2,450.00**. If necessary, this order may be filed in the Small Claims 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: May 19, 2020

Residential Tenancy Branch