



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: PSF, CNR, LRE
Landlord: FFL, OPR-DR, OPRM-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants’ Application for Dispute Resolution was made on March 5, 2020 (the “Tenant’s Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent;
- an order for the Landlord to provide a service or facility;
- an order restricting the Landlord’s right to enter; and
- an order granting the recovery of the filing fee

The Landlord’s Application for Dispute Resolution was made on March 11, 2020, (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant K.G. and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenants' request for an order that the Landlord provide a service or facility, and order to restrict or suspend the Landlord's right to enter are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice dated March 4, 2020, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenants were employed by the Landlord to install drywall and paint the residential property. It was agreed on June 9, 2018 that the Landlord owed the Tenants \$16,900 for the work that the Tenants completed for the Landlord. At that time, the parties agreed that the Tenants would occupy the basement rental unit and pay rent in the amount of \$650.00 to the Landlord which was expected to be paid on the first day of each month. The parties also agreed that \$650.00 would be deducted each month from the outstanding balance the Landlord owed to the Tenants. This arrangement was to start on July 1, 2018 and end on September 30, 2020. The Tenants were not required to pay a security deposit and continue to occupy the rental unit currently. Both parties provided a copy of this agreement in support.

The Landlord testified that the Tenants did not pay rent in the amount of \$650.00 for the month of March 2020. The Landlord testified that he subsequently issued a 10 Day

Notice to End Tenancy for Unpaid Rent in the amount of \$650.00, dated March 4, 2020 (the "10 Day Notice") with an effective vacancy date of March 15, 2020. The Landlord stated that he served the Tenants in person on March 5, 2020.

The Landlord stated that since he served the 10 Day Notice, the Tenants have failed to pay the outstanding balance of rent owing as indicated on the 10 Day Notice. Furthermore, the Landlord stated that the Tenants have also failed to pay rent when due in April and May 2020. The Landlord stated that the Tenants currently owe rent in the amount of \$1,950.00 to the Landlord.

The Tenant confirmed receiving the 10 Day Notice on March 5, 2020. The Tenant stated that the parties have not formed a tenancy agreement and that the Landlord continues to owe the Tenants for the work they had conducted for the Landlord. The Tenant stated that the Landlord has been unpredictable as to which day he collects the rent. The Tenant stated that after they received the 10 Day Notice, they felt as though they should not have to pay the Landlord as he still owes the Tenants money for the work they completed for him. As such, the Tenants are seeking to cancel the 10 Day Notice.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the 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 this Act to deduct all or a portion of the rent.

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

I find that the Landlord served the 10 Day Notice dated March 4, 2020, with an effective vacancy date of March 15, 2020, by serving it to the Tenants in person on March 5, 2020. The Tenant confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

During the hearing, the Tenant stated that a tenancy agreement was not completed between the parties, therefore there is no tenancy. According to the Residential Policy Guideline 9; a tenancy agreement exists if there is exclusive possession for a term and

rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

In this case, the parties agreed that they formed a contract in which the Tenants would occupy the rental property for a term, and that they would be required to pay rent in the amount of \$650.00 per month to the Landlord. As such, I find that a tenancy exists.

I accept that the parties agreed that the Tenants have not paid rent to the Landlord for March, April, and May 2020 in the amount of \$1,950.00. As such, I find that the Tenants breached Section 26 of the Act. The Tenant feels as though the Landlord owes the Tenants monetary compensation for work the Tenants completed for the Landlord.

Section 2(1) of the Act outlines what the Act applies to;

Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

In light of the above, I find that the Act does not apply to employment matters. As such, I am not at liberty to make a finding with respect to the amount of compensation the Landlord owes the Tenant. I do however find that the Tenants were required to pay rent to the Landlord each month and that the Tenants provided insufficient evidence to demonstrate that they were entitled to withhold the rent from the Landlord. As such, I dismiss the Tenants' Application to cancel the 10 Day Notice without leave to reapply.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The parties agreed that the Tenants have not paid rent for March, April, and May 2020. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,950.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,050.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
<i>Unpaid rent:</i>	<i>\$1,950.00</i>
<i>Filing fee:</i>	<i>\$100.00</i>
<i>TOTAL:</i>	<i>\$2,050.00</i>

Conclusion

The Tenants breached the Act by not paying rent when due. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,050.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 04, 2020

Residential Tenancy Branch