



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNR, CNC, DRI, RP, LRE, OLC
Landlord: 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 20, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the Act:

- an order cancelling a One Month Notice for Cause;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- dispute a rent increase;
- an order for regular repairs;
- an order restricting or suspending the Landlord’s right to enter the rental unit; and
- an order that the Landlord comply with the tenancy agreement, Act, or regulations.

The Landlord submitted an Application for Dispute Resolution by Direct Request on March 23, 2020 (the “Landlord’s Application”), however, it was adjourned to a participatory hearing as the Tenants had already submitted their Application. The Landlord applied for the following relief, pursuant to the Act:

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

The Tenant R.T. 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 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, 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 as well as for cause.

The Tenant's request to dispute a rent increase, an order for regular repairs, an order restricting or suspending the Landlord's right to enter the rental unit, and an order that the Landlord comply with the Act are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling a One Month Notice for Cause, pursuant to Section 47 of the *Act*?
2. Are the Tenants entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 16, 2020 pursuant to Section 46 of the *Act*?
3. Is the Landlord entitled to an order of possession in relation to unpaid rent, pursuant to Section 46 and 55 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
5. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2015. Currently, rent in the amount of \$1,200.00 is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$475.00 which the Landlord currently holds.

The Tenants had applied to cancel a One Month Notice to End Tenancy for Cause, however neither party provided a copy of the One Month Notice for my consideration.

As such, the Tenants' Application to cancel the One Month Notice is dismissed without leave to reapply.

The Landlord stated that the Tenants have failed to pay rent in the amount of \$1,200.00 for the month of March 2020. Furthermore, the Landlord stated that the Tenants had an outstanding balance in the amount of \$100.00 for December 2019 rent. As such, the Landlord served to the Tenants with a 10 Day Notice in person on March 16, 2020 with an effective vacancy date of March 25, 2020. The Landlord submitted a copy of the 10 Day Notice in support.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$1,850.00 which was due on March 1, 2019. The Notice informed the Tenant that the 10 Day Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. During the hearing, it was determined that \$550.00 of the amount shown on the 10 Day Notice relates to an outstanding bylaw ticket. The Landlord was notified during the hearing that this amount could not be considered as it does not relate to unpaid rent.

After serving the 10 Day Notice, the Landlord stated that he received a rental assistance cheque in the amount of \$670.00 on April 1, 2020. The Landlord testified that he has not received any further payments towards the outstanding balance of unpaid rent. The Landlord stated that the Tenants have also failed to pay rent when due for April and May 2020. As such, the Landlord is seeking an order of possession as well as monetary compensation in the amount of \$3,030.00 for unpaid rent.

The Tenant confirmed that he received the 10 Day Notice in person on March 16, 2020. The Tenant confirmed that he has not paid the Landlord the full amount of rent for December 2019, March, April and May 2020. The Tenant applied to cancel the 10 Day Notice on March 20, 2020 as he feels as though the Landlord has not provided an accurate calculation of the unpaid rent. As such, the Tenant is seeking to cancel the 10 Day Notice.

Analysis

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

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

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.

The Landlord testified that he served the 10 Day Notice to the Tenants in person on March 16, 2020. The Tenant confirmed receipt on the same date. I find that 10 Day Notice was 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. Therefore, the Tenant had until March 21, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that the Tenants did not pay the full amount of outstanding rent to the Landlord within the five days permitted under the *Act*. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant were entitled to retaining any portion of the rent, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, March 26, 2020, pursuant to section 46(5) of the *Act*.

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 Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,030.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$962.50, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$3,030.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$475.00</i>)
TOTAL:	\$2,655.00

Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlord. 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 \$2,655.00. 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 11, 2020

Residential Tenancy Branch