



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPUM-DR, OPU-DR, FFL

Introduction

In this dispute, the landlords seek compensation for unpaid rent and utilities, and an order of possession for unpaid rent and utilities, pursuant to sections 55 and 67 of the Act. They also seek recovery of the filing fee, pursuant to section 72 of the Act.

I note that the original hearing occurred on April 22, 2020, from which a decision and two orders resulted. The tenants then filed an Application for Review Consideration, a decision from which was issued on May 6, 2020. That decision suspended the decision and orders of April 22, 2020 and the arbitrator ordered that a new hearing take place. A new hearing was held before me on June 11, 2020, which I then adjourned to July 9, 2020. The reasons for the adjournment are set out in my Interim Decision of June 11, 2020, but which I briefly refer to below.

At the July 9, 2020 hearing, which was held by teleconference, the landlord's agent (the landlord's son) and the landlord attended. The tenants did not. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

It should be noted that a new Notice of Dispute Resolution Proceeding was sent to all parties on June 12, 2020 by way of email from the Residential Tenancy Branch. The tenant's email address was added to the file at the request of the tenant during the hearing on June 11, 2020, and there is no information indicating that she did not receive the Notice of Dispute Resolution Proceeding. Given the tenant's previous request for an adjournment to, *inter alia*, obtain legal counsel, and given that there is no indication that she ever retained counsel, I find that the tenant's reason for previously requesting an adjournment to be duplicitous. In other words, I find that the tenant has attempted to delay the process without justification.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues to be Decided

1. Are the landlords entitled to an order of possession for unpaid rent and utilities?
2. Are the landlords entitled to a monetary order for unpaid rent and utilities?
3. Are the landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2019 and the tenants currently reside in the rental unit. At the outset, I should clarify that only one of the tenants (A.G.) appears to actually reside in the rental unit. I do, however, refer to the “tenants” for consistency.

The tenancy is a fixed-term tenancy ending November 30, 2020. Monthly rent is \$1,900.00, which is due on the first of the month. Water is included in the rent, but electricity is not. The tenants paid a security deposit of \$950.00, which is currently held in trust by the landlords.

On February 7, 2020, the landlords gave the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) for unpaid rent of \$2,665.00 and unpaid utilities of \$322.52, both due on February 2, 2020. The Notice was held to be properly served in both the original decision of April 22, 2020 and the review consideration decision of May 6, 2020. I make a similar finding in this Decision. The Notice indicated that the tenancy would end on February 17, 2020 if the tenants did not pay the rent and utilities or file an application for dispute resolution within the required timeline.

As of today, July 9, 2020, the landlord’s son testified that the tenant owes a total of \$7,051.60 in rent arrears and utilities. He also testified that while the tenant has made some previous payments toward arrears, they remain in arrears.

Submitted into evidence, and considered, were copies of the written tenancy agreement, an addendum to the agreement, the Notice, a copy of a payment made for the utility by the landlord (and who the tenant owes), various strata complaints about the tenant, a text message conversation, a proof of service of the Notice, a 30 day written demand letter for monies owed, a registered mail receipt, and two promissory notes wherein the landlords attempted to receive payments for arrears.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent, which includes utilities required to be paid by a tenant, when they are due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service.

The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenants have not paid rent and utilities in the amount of \$7,051.60. Further, there is insufficient evidence before me that the tenants had any right under the Act to not pay the rent, and no evidence indicating that she applied to cancel the Notice.

Section 46(1) of the Act states that a landlord

may end a tenancy if rent is unpaid on any day after 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.

In this dispute, the landlord gave the Notice on February 7, 2020.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

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

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2)(b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the landlords gave the Notice, the tenants did not dispute the Notice by making an application for dispute resolution, and the time for making that application has now expired.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving the claims in their application. As such, pursuant to section 55(4) of the Act, I grant the landlords an order of possession. Further, pursuant to section 67 of the Act, I award the landlords compensation in the amount of \$7,051.60.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful, I grant their claim for reimbursement of the \$100.00 filing fee. As such, the total monetary award is \$7,151.60.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.”

As the tenancy ended on February 17, 2020, it is now after the end of the tenancy and I thus order the landlords to retain the tenants’ security deposit of \$950.00 in partial satisfaction of the above-noted award.

The total monetary order, then, is \$6,201.60, which is issued in conjunction with this Decision, along with the order of possession.

Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$6,201.60, which must be served on the tenants. Should the tenants fail to pay the landlords the amount owed, the landlords may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

The original decision and orders dated April 22, 2020 are hereby set aside.

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 9, 2020

Residential Tenancy Branch