



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords:	OPR, MNRL-S, FFL
For the Applicants YC, BC and VC:	CNC, CNR

Introduction

The Applicants YC, BC and VC filed an Application for Dispute Resolution (the “Application”) on July 6, 2020 seeking an order to cancel the ‘10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlords on July 1, 2020. Additionally, these Applicants applied for an order to cancel the ‘One Month Notice to End Tenancy for Cause’ issued on July 17, 2020.

They stated they delivered notice of this dispute hearing to the landlords. The landlords confirmed receipt of this prepared evidence and the notice for this hearing.

The landlords filed an Application for Dispute Resolution (the “landlords’ Application”) on July 9, 2020. They are seeking an order of possession for the rental unit. Additionally, they are seeking an order for monetary compensation for unpaid rent, holding the security deposit. Additionally, they seek to recover the filing fee for their Application.

The landlords stated that they sent the notice of this hearing to the named tenants on their Application via registered mail on July 10, 2020. They provided a copy of the mail transaction receipt and tracking numbers. The party in attendance, YC, confirmed they received the landlords’ packages sent to RC and SD at the rental unit address.

These matters are crossed and proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 10, 2020. Both the Respondents and Applicants attended the conference call hearing however, the Respondents named on the landlords’ Application did not attend. I explained the

process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

Preliminary Issues

The landlord issued a separate 'One Month Notice to End Tenancy for Cause' on July 17, 2020. The Applicants YC, BC and VC amended their Application to apply for an order that cancels this subsequent notice to end tenancy. After that, the Residential Tenancy Branch scheduled a separate hearing for this matter. The Applicant YC advised of this separate date and time in this hearing.

In the hearing I advised the parties that the separate hearing on the matter of the One-Month Notice stands as scheduled on a later date. Thus stated, I sever the matter of cancellation of that separate notice and give the matter no consideration in this decision.

Tenants' Application

Both in a written statement and in their oral testimony, the landlords take issue with the Applicants YC BC and VC referring to themselves as "tenants" and maintain there is no tenancy agreement in place between these individuals and themselves as the landlords. The landlords refer to them as "unauthorized occupants". Based on this, I must consider whether YC, BC, and VC are tenants under the *Act* and had a right to file their Application.

The Applicants YC, BC and VC provided a copy of the tenancy agreement that was signed by the two individuals named as tenants (RC and SD) on the landlords' Application. This agreement is dated June 3, 2018, effective on that date. They submitted a copy with notes included that state: "Expired June 2019 no new agreement has been signed".

The Applicant YC provided a written statement with their Application. It states that they had the approval of the landlord to move into the rental unit in August 2019. YC is the parent of the party RC named as a tenant in the agreement. They also provide that they had a "conversation with the landlord regarding taking over tenancy" and that they paid a portion of the full rental amount "for [their] first months rent". In this same statement, the Applicant YC states that "[the landlord] is now denying [their] verbal agreement with [them]".

The landlords submit in their written statement the following:

- “[RC] decided to allow these individual to move in without permission or even sharing their names”.
- “[YC] indicated it was [RC’s] responsibility to pay the rent and not [theirs].”
- “In April 2020, [RC] called us to say [YC] would pay for [RC].”
- “When we found out that [RC] wasn’t living in the house but his belongings were still there, we were clear with [YC] that they did not hold a contract with us and the contract was in [RC’s] name.”

There is no evidence the tenant RC gave a written statement to terminate the existing tenancy agreement. It is a month-to-month agreement, with no fixed term ending date. It does not expire as claimed by YC. In this case, the tenancy agreement is valid and continuing through to the present. I find it more likely than not that RC allowed their parent and other family members to move into the premises as occupants.

An attempt to pay rent by YC does not create a tenancy. Individuals who are not tenants named in an agreement may pay rent on a tenant’s behalf, as is quite common in government-supported housing agreements.

YC, BC, and VC are not tenants under the *Act*. They have no legal rights or obligations under the *Act*. This extends through to having no legal right to make their Application to cancel the 10-Day Notice. RC was not named in their Application and there is no authorization for the YC, BC and VC to act as an agent.

In conclusion, I dismiss the Application to cancel the 10-Day Notice, without leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The occupant present in the hearing provided the tenancy agreement that was in place between the landlords and tenants. The agreement shows the tenancy began on June 3, 2018, with the rent amount of \$1,900.00 payable on the 1st of each month. There was a payment of \$950.00 for a security deposit paid at that time.

The landlords applied for an Order of Possession pursuant to the 10-Day Notice issued on July 1, 2020. They posted the notice to the door of the rental unit on July 1, 2020 and the occupants confirmed this in the hearing. A photograph submitted by the landlords shows them taping the document to the door of the unit on that date.

The 10 Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, July 14, 2020. There is no record of the tenants named on the 10-Day Notice – and those so named in the tenancy agreement -- subsequently paying the rent or applying for dispute resolution. The tenant SD moved out in 2019 as confirmed by both parties.

The reason for the landlord serving the 10-Day Notice is the accumulated unpaid rent due on March 1, 2020. This amount is stated on the 10-Day Notice: \$2,800.00. A separate document titled 'Summary of rents received' shows an accumulation of rent amounts owing through 2019 and early 2020 – this total is \$2,800.00.

The landlord also applied for a monetary order for rent for the total amount of \$2,800.00. They clarified on their Application that this is the “outstanding rent payment prior to March 16, 2020.” On their Application, they indicated they wish to hold the security or pet deposit payment to offset the total amount owed.

The landlords also provided several screen-capture images that show the messages between themselves and the tenants involving past payments and amounts owing. These show requests from the landlords to the tenants requesting payment, acknowledgement of partial payments received, and tenants acknowledging late payments.

The tenants did not attend the hearing; however, the occupants in the unit stated they attempted to pay the current amounts of rent owing as they accumulated from March 2020 onwards. In their written statement, the occupant YC provides as follows: “we have always paid the rent there was never any issue about rent past owed from March or any other time until June.” They state they made payments for April and May; however, the March amount owing is not accounted for. The occupant YC only addressed past amounts owing to say that they were not aware of these amounts, with “never any issue about rent past owed from March or any other time until June.”

Analysis

From the testimony of the parties and the copy provided by the occupants, I am satisfied that a tenancy agreement was in place. The landlords’ agent provided the specific term of rental payment and amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise. The tenant SD moved out in 2019, as confirmed by both parties.

Section 46(4) allows a tenant who receives a notice to end tenancy 5 days to pay the overdue rent or submit an Application for Dispute Resolution to cancel the Notice. Section 46(5) stipulates that if a tenant fails to apply seeking to cancel the Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and they must vacate the rental unit.

Based on the oral testimony, and in accordance with section 88 and 90 of the Act, I find that the tenant was deemed served with the 10 Day Notice on July 4, 2020 three days after the landlord posted it to the door of the rental unit.

I accept the evidence before me that the tenant failed to pay the rent owed in full by July 9, 2020, within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 14, 2020.

The landlords' agent provided testimony on the account in question and the accumulation of rent owing, ultimately claimed as compensation. As presented, I find the amount of \$2,800.00 – as provided for on the 10 Day Notice – is accurate.

The tenants did not attend the hearing. There is no evidence contrary to that provided by the landlord on past rent amounts owing carried over from 2019. The occupant YC who attended the hearing spoke to their attempts to pay amounts of rent from March going forward. When weighing the evidence they present in the form of their testimony versus the ledger sheet provided by the landlords, I find the evidence clear that the amounts owing are accurate, and the March rent was not paid.

As claimed, I find the landlords are entitled to an award for the amount claimed: \$2,800.00.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$2,800.00. After setting off the security deposit, there is a balance of \$1,850.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$1,850.00 as compensation for the March 2020 rent and past rent amounts owing.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$1,850.00.

As the landlords are successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,950.00 for rent owed and a recovery of the filing fee for this hearing

application. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: August 21, 2020

Residential Tenancy Branch