



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, OPU, MNRL, MNDCL, MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- And Order of Possession based on the Tenant’s written notice to end tenancy;
- An Order of Possession based on two undisputed 10 Day Notice’s to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice’s);
- Unpaid rent and utilities;
- Compensation for damage to the rental unit;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord M.M. (the Landlord), the Landlord’s witness and the Tenant, all of whom provided affirmed testimony. As the Tenant acknowledged receipt of the Application and Notice of Hearing, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application the Landlord sought multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Landlord sought possession of the rental unit pursuant to two 10 Day Notice's and a notice to end tenancy given by the Tenant, as well as outstanding rent and utilities, I find that the priority claims relate to whether the tenancy will continue or end and the payment of rent and utilities. I find that the Landlord's claims for compensation for monetary loss or other money owed and damage to the rental unit are not sufficiently related to the notices to end tenancy or the payment of rent and utilities and as a result, I exercise my discretion to dismiss these portions of the Landlord's claim with leave to reapply.

Preliminary Matter #2

No documentary evidence was submitted for my review and consideration by the Tenant and although the Tenant acknowledged receipt of the Landlord's documentary evidence, I note that their written submissions were served on the Tenant and submitted to the Residential Tenancy Branch (the Branch) past the deadline set out in rule 3.14 of the Rules of Procedure.

As a result of the above, I accepted the Landlord's documentary evidence for consideration in the hearing but excluded their late written submissions, which the Landlord then read aloud during the hearing for my consideration.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for the rental unit?

Is the Landlord entitled to unpaid rent and utilities?

Is the Landlord entitled to recovery of the filling fee?

Background and Evidence

In the hearing the parties agreed that only a verbal tenancy agreement was in place. They agreed that the tenancy began on August 1, 2019, that the Tenant rented the entire home but was entitled to have their own roommates, that \$1,500.00 in rent was to be paid on the first day of each month and that utilities such as cable/internet were to be paid in addition to rent.

The Landlord stated in the hearing that in April 2020, the Tenant gave verbal and written notice to end the tenancy effective June 1, 2020, and that there was a text to that effect in the documentary evidence before me. The Landlord stated that the Tenant allowed them to show the rental unit to the perspective new tenants and that one of these perspective new tenants signed a tenancy agreement with them effective June 1, 2020. The Landlord stated that the Tenant failed to move out on June 1, 2020, and as a result, the new tenant has been unable to move in. The Landlord therefore sought an order of possession for the rental unit under section 55(2)(a) of the *Act*.

Although the Tenant acknowledged giving notice to end their tenancy effective June 1, 2020, and allowing prospective new tenants to view the property, they argued that they had essentially told the Landlord they were moving out to “get them off their back” as they were being harassed by the Landlord regarding unpaid rent. The Tenant stated that they were ultimately unable to secure alternate accommodation and as a result, they advised the Landlord near the end of May 2020 that they would not be moving out.

The parties also agreed that the Tenant was served with two 10 Day Notice’s to End Tenancy for Unpaid Rent or Utilities, copies of which were submitted for my review, which the Tenant did not dispute.

In the hearing the Landlord stated that the Tenant currently owes \$13,506.30 in outstanding rent and utilities for April 2020 – August 2020 and that the last amount paid to them for rent and utilities was \$350.00 in January of 2020. Although the Tenant acknowledged that some rent and utilities are owed to the Landlord, they denied owing the amount claimed by the Landlord. The Tenant stated that they have proof that additional rent and utilities were paid, such as bank records, but acknowledged they did not submit these for my review, and stated that the Landlord had refused to give them and their roommate receipts for rent paid in cash. The Landlord denied failing to provide rent receipts and stated that this is the first they are hearing about rent allegedly paid in cash without the issuance of receipts.

Analysis

Regardless of the reason the Tenant chose to give notice, they agreed in the hearing that they gave verbal and written notice in April of 2020 to end their tenancy effective June 1, 2020. As a result, I find that the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55(2)(a) of the Act, despite the fact that the Tenant either never intended to move out in compliance with their notice to end tenancy or subsequently changed their mind about moving out. As the effective date of the Tenant's notice to end tenancy has passed, I find that the Landlord is entitled to an Order of Possession for the rental unit effective two (2) days after service on the Tenant.

In the hearing the Landlord sought \$13,506.30 in outstanding rent and utilities for April 2020 – August 2020. Although the Tenant denied owing this amount, they submitted no documentary evidence in support of their testimony that they had paid more rent and utilities to the Landlord than alleged and the Landlord stated that they cannot provide any other proof of what was not paid to them. In the absence of evidence from the Tenant corroborating that they have paid more money to the Landlord for rent and utilities than the Landlord claims, I am satisfied that the Tenant owes the amounts claimed by the Landlord in outstanding rent and utilities. As a result, I award the Landlord recovery of \$13,506.30 in outstanding rent utilities.

Pursuant to section 72(1) of the Act, I therefore grant the Landlord recovery of the \$100.00 filling fee. Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary order in the amount of \$13,606.30.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$13,606.30**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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 11, 2020

Residential Tenancy Branch