



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY & PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL; CNR-MT, MNRT, MNDCT, RP,
RR, OLC, PSF, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 4, 2020 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to complete repairs to the rental unit, pursuant to section 33;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlords' agent ("landlord"), the landlords' lawyer, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 71 minutes.

This hearing began at 9:30 a.m. with me, the tenant, and the landlords' lawyer present. The landlord called in late at 10:00 a.m., after the landlords' lawyer contacted her to phone in to the hearing. The hearing ended at 10:41 a.m.

The landlord confirmed that she was the property manager and that she had permission to represent the two landlords named in these applications (collectively "landlords"). The landlord confirmed that the landlords' lawyer had permission to represent the two landlords named in this application.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. Both parties confirmed that they were ready to proceed with this hearing.

The landlords' lawyer stated that the tenant was served with the landlords' 10 Day Notice on September 4, 2020, by way of registered mail. The tenant confirmed receipt on September 14, 2020. Both parties agreed that the effective move-out date on the notice is September 20, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on September 14, 2020. The tenant confirmed that he filed his application to dispute the 10 Day Notice on September 14, 2020.

As the tenant applied on the same date that he received the 10 Day Notice, I find that his application for more time to make an application to cancel the 10 Day Notice, is not required and is therefore, dismissed without leave to reapply. I notified both parties about my decision during the hearing.

Preliminary Issue – Severing Tenant's Monetary Application

Rule 2.3 of the Residential Tenancy Branch *Rule of Procedure* states that claims made in an application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims, regarding the continuation of this tenancy are not sufficiently related to the tenant's other claims for monetary compensation, to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the 10 Day Notice.

I exercise my discretion to dismiss the tenant's monetary claims with leave to reapply and I informed both parties of this during the hearing.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Is either party entitled to recover the filing fee for their application?

Is the tenant entitled to an order requiring the landlords to complete repairs to the rental unit?

Is the tenant entitled to an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2018. Monthly rent in the current amount of \$4,088.00 is payable on the first day of each month. A security deposit of \$1,994.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords seek an order of possession based on the 10 Day Notice. The landlords seek a monetary order of \$612.00 for unpaid rent for the balance owed for September 2020, and to recover the \$100.00 application filing fee. The tenant seeks to cancel the landlords' 10 Day Notice.

Both parties agreed that the landlords issued the 10 Day Notice for unpaid rent of \$2,988.00 due on September 1, 2020. Both parties agreed that the tenant made partial rent payments to the landlords of \$1,100.00 on September 1, 2020 and \$1,976.00 on September 14, 2020. Both parties agreed that the tenant was entitled to a rent reduction for repairs and a filing fee of \$400.00 total, ordered by a different Arbitrator, pursuant to a previous RTB decision, dated August 21, 2020. The file number for that hearing appears on the front page of this decision.

The landlord stated that the tenant owes a balance of \$612.00 for September 2020 rent. The tenant stated that he was entitled to deduct utilities of \$300.00, that the downstairs tenant owed him, and the utilities were in the tenant's name. The landlord claimed that the tenant had not provided her with the utilities bill, so he was not entitled to deduct it from rent. The tenant claimed that he was entitled to \$312.00 in "missing goods," which he said that the downstairs tenant stole from him, that were under lock and key, that the landlords failed to do anything about. The tenant confirmed that he did not have an order from an arbitrator to deduct rent and he did not have entitlement to deduct for emergency repairs for the above \$612.00 owing for September 2020 rent.

Analysis

I find that the landlords provided undisputed evidence at this hearing. The tenants failed to pay the full rent of \$4,088.00 due on September 1, 2020, within five days of receiving the 10 Day Notice. The tenant paid partial rent of \$3,076.00 to the landlords for September 2020 rent. Both parties agreed that the tenant was entitled to deduct \$400.00 from September 2020 rent, as per a previous Arbitrator's order, dated August 21, 2020. The tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

However, as per section 26 of the *Act*, the tenant did not provide a valid reason to deduct the remaining \$612.00 from rent, such as emergency repairs under section 33 of the *Act* or an order from an Arbitrator. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the remaining \$612.00 for September 2020 rent or to provide a valid reason to deduct this amount from rent, within five days led to the end of this tenancy on September 24, 2020, the corrected effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by September 24, 2020. As this has not occurred, I find that the landlords are entitled to an Order of Possession effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. Therefore, the tenant's application to cancel the landlords' 10 Day Notice is dismissed without leave to reapply. I notified both parties of my decision verbally during the hearing.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply.

I find that the tenant failed to pay rent of \$612.00 to the landlords for September 2020. Accordingly, I find that the landlords are entitled to rental arrears of \$612.00 from the tenant. I notified both parties of my decision verbally during the hearing.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of \$1,994.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$712.00 from the tenant's security deposit of \$1,994.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$1,282.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As this tenancy is ending, I dismiss the remainder of the tenants' application for an order for the landlords to comply, to complete repairs, and to provide services or facilities, without leave to reapply. These orders only relate to an ongoing tenancy.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain \$712.00 from the tenant's security deposit of \$1,994.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$1,282.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenant's application for a monetary order for the cost of emergency repairs, for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, is dismissed with leave to reapply.

The remainder of the tenant's application for more time to make an application to cancel the landlords' 10 Day Notice, cancellation of the landlords' 10 Day Notice, an order requiring the landlords to complete repairs to the rental unit, an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, an order requiring the landlords to provide services or facilities required by law, and to recover the \$100.00 filing fee, is dismissed without leave to reapply.

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: October 15, 2020

Residential Tenancy Branch