



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, LRE, MT
For the landlord: OPUM-DR, OPU-DR-PP, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant, NS, applied for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord; and
- an order suspending or setting conditions on the landlords' right to enter the rental unit.

The landlord applied for the following against both listed tenants:

- an order of possession of the rental unit pursuant to the Notice served to the tenants under the direct request process;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord attended the hearing; however, neither tenant attended.

The landlord stated he served each tenant with his application for dispute resolution and Notice of Hearing by Xpresspost on September 25, 2020. The landlord provided the Canada Post Customer Receipts containing the Tracking Numbers to confirm this mailing. Those numbers are listed on the style of cause page in this Decision.

I accept the landlord's evidence that the tenants were served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenants' absence.

The landlord said he had never received the tenants' Application for Dispute Resolution, evidence, and Notice of Hearing (application package) and was not aware they had a hearing set for this date and time.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenants, I order their application dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of July 15, 2020, a fixed term through July 31, 2025, monthly rent of \$1,550, due on the 1st day of the month, and with a security deposit of \$775 being paid by the tenants to the landlord.

The written tenancy agreement also listed that the tenants were “responsible for portion of Hydro and 3/8 city utilities”.

The landlord submitted that the tenants failed to pay the monthly rent for August and September, and that as a result, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice), by posting it on their door, on September 1, 2020, listing unpaid rent of \$3,100 owed as of September 1, 2020 and unpaid utility charges of \$150. The effective move-out date listed was September 1, 2020. The landlord provided a copy of the Notice.

The landlord submitted that the tenant offered a type of repayment plan through text messages. Filed into evidence were copies of numerous text messages between the landlord and tenants.

The landlord said that tenant AD vacated the rental unit at some point and left NS living there. Since the service of the Notice to NS, he set fire to the rental unit and vacated sometime in late September, without notice, according to the landlord. The landlord said the police have now attended to this matter, due to the arson and stolen property by NS.

The landlord submitted that the tenants failed to pay the monthly rent for August and September and that due to the failure to provide this rent, and the arson, he is entitled to a loss of rent revenue for October 2020.

The landlord also said that he should be entitled to a loss of rent revenue for November as well.

As to the unpaid utility charges, the landlord confirmed he is unable to determine the amount of hydro actually owed by the tenants as he did not have access to their meter and currently, there is no specific charges yet for the city utilities.

The landlord said that even though both tenants have vacated the rental unit, he would still prefer to have an order of possession, along with the monetary order for unpaid rent.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

As the tenants failed to attend the hearing despite being properly served, I consider this application to be unopposed.

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In this case however, despite this provision of the Act, on July 30, 2020, the *COVID-19 Regulation* went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the declaration of the state of emergency made on March 18, 2020 expires or is cancelled. This Regulation can be accessed through:

https://www.bclaws.ca/civix/document/id/crbc/crbc/195_2020

Under this Regulation, the rent due during this emergency period is known as the “affected rent”.

Section 1.02 of the *COVID-19 Regulation* requires that a landlord must give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan.

In connection with the *COVID-19 Regulation*, Residential Tenancy Policy Guideline 52 was enacted.

Under this Guideline, “**affected rent**” is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020. [*My emphasis*]

Guideline 52, Section C states that a landlord must not give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent without a valid repayment plan.

Upon review of the Notice here issued September 1, 2020, the landlord listed unpaid rent due August 1, which is included as affected rent. The landlord was prohibited from putting unpaid affected rent on a 10 Day Notice at that time. I find the text messages from tenant NS were only offers of payments on certain dates and not a valid repayment plan.

Additionally, the landlord listed unpaid rent due on September 1, 2020, which means the monthly rent for September was not yet overdue when the Notice was served.

For these reasons, I find the 10 Day Notice was invalid and I therefore cancel the Notice. As a result, I dismiss the landlord’s request for an order of possession of the rental unit.

Monetary Order –

Although I have cancelled the Notice for the above reasons, I find the tenants vacated the rental unit owing monthly rent due under the written tenancy agreement for August and September, as claimed on the landlord’s application.

Under 4.2 of the Rules, a landlord may amend their application at the hearing in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made.

I find it reasonable under the circumstances to allow the landlord to increase his monetary claim as the tenants vacated without notice to the landlord in late September

and due to the fire allegedly set by tenant NS. I accept the landlord's undisputed testimony that the rental unit is still damaged and is not suitable for re-renting as of the day of the hearing.

I therefore find the landlord has established a total monetary claim for unpaid rent in the amount of \$4,650, or \$1,550 for August, September and October, each.

I **dismiss** the landlord's monetary claim for unpaid utility charges **with leave to reapply**, as he confirmed that as of the date of the hearing, the amounts owed by the tenants were undetermined.

I grant the landlord a monetary award of \$100 for recovery of the filing fee paid for his application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,750, comprised of unpaid rent of \$4,650 as noted above and recovery of the filing fee of \$100.

Should the tenants fail to pay this amount to the landlords without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are cautioned that costs of such enforcement are recoverable from the tenants.

If the landlord chooses, he may retain the tenants' security deposit of \$775 to partially satisfy his monetary award. In the event, the monetary order is reduced by that amount.

I find it important to note that I have not considered the landlord's request at the hearing for loss of rent revenue for November 2020, as that claim is premature.

The landlord is at liberty to file another application against the tenants for loss of rent revenue for November as well as any damages caused by the tenants.

Conclusion

The landlord's application for an order of possession for the rental unit is dismissed, without leave to reapply.

The landlord's application for a monetary order for unpaid rent is granted.

The landlord's application for unpaid utility charges is dismissed, with leave to reapply.

The landlord has been granted recovery of his filing fee.

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 30, 2020

Residential Tenancy Branch