



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE / OPR, OPRM, FFL

Introduction

On September 23, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10 day Notice to End Tenancy for Unpaid Rent, dated September 19, 2020 (the “10 Day Notice”) and to request an order to restrict the Landlord’s entry into the rental unit.

On October 2, 2020, the Landlords submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlords requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

The Landlord, his Counsel and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matters

The Tenant testified that he provided the Landlord a copy of his evidence along with the Application for Dispute Resolution Proceeding. I accept the Tenant’s evidence into this hearing.

The Landlord testified that he sent the Tenant a copy of his evidence along with the Application for Dispute Resolution Proceeding package (the “Application”) via registered mail on October 20, 2020. The Tenant stated he did not receive the Landlord’s Application. The Landlords’ Counsel provided a Canada Post tracking number and stated the Canada Post website indicated that a notice was left at the Tenant’s address which provided information on how to pick up the Application; however, that the package was not picked up by the Tenant. Based on the Landlord’s evidence, I accept that the Tenant failed to pick up the Application from Canada Post, and find that the

Application was duly served in accordance with Section 89 of the Act. I accept the Landlord's evidence into this hearing.

The Tenant included the issue of restricting the Landlord's right to enter the rental unit within his Application for Dispute Resolution. This issue was determined as not related to the main issue in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*

Issues to be Decided

Should the 10 Day Notice be cancelled, in accordance with Section 46 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the Tenancy Agreement:

The one-year, fixed-term tenancy began on September 1, 2020. The rent was \$1,650.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$825.00. The Tenancy Agreement was signed by the parties on August 5, 2020.

The Landlord provided undisputed testimony that the Tenant failed to pay the full amount of \$1,650.00 for the September 2020 rent. The Landlord stated that the cheque the Tenant provided for the September 2020 rent was returned by the bank with insufficient funds. The Tenant then provided the Landlord with \$1000.00 cash on September 7, 2020; however, failed to pay the remaining \$650.00.

The Landlord testified that the 10 Day Notice was personally served on the Tenant on September 19, 2020. The 10 Day Notice had an effective move-out date of September 29, 2020. The Tenant provided the 10 Day Notice as evidence.

The Landlord stated that the Tenant is still living in the rental unit and did not pay rent for October or November 2020. The Landlord is requesting a monetary order for the unpaid rent in the amount of \$3,950.00 and an Order of Possession for the rental unit.

The Tenant testified that he didn't move into the rental unit until September 7, 2020 and said that the Landlord would prorate the rent.

The Tenant stated the Landlord did not replace a washing machine that was not working and that he (the Tenant) should not have to pay rent until the washing machine is fixed or replaced.

The Tenant testified that he did not pay the rent for October or November 2020.

Analysis

Based on the Landlord's undisputed testimony and the signed Tenancy Agreement, I find that the Tenant was required to pay rent in the amount of \$1,650.00 by the first day of each month.

The Tenant stated that he had an oral agreement with the Landlord to pro-rate the September rent. The Landlord denied that there was any oral agreement. I note that there was no evidence presented to me to support the Tenant's claim of pro-rated rent. I further note that the Tenancy Agreement clearly states that the tenancy was to begin on September 1, 2020. For these reasons, I find that the Tenant has not paid the full amount of rent for September 2020, for even if there was an oral agreement between the parties, the Tenant would have owed approximately \$1,277.41 for the 24 days he lived in the rental unit in September 2020.

Section 26 of the Act explains that a tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Based on the undisputed evidence of both parties, I find the Landlord served the 10 Day Notice to the Tenant on September 19, 2020, pursuant to Section 88 of the Act, with an effective move-out date of September 29, 2020.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. Upon review, I find the Notice, issued by the Landlord on September 19, 2020, complies with the requirements set out in Section 52.

As a result of the above evidence and findings, I find that the 10 Day Notice is valid and as such, dismiss the Tenant's Application without leave to reapply.

I have dismissed the Tenant's Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession, pursuant to section 55 of the Act.

As the Tenant provided undisputed evidence that he has not paid rent for October or November 2020 and the Landlord is requesting a Monetary Order for unpaid rent for these months, I find that the Landlord has established a monetary claim for unpaid rent and will be issued an Order of Possession for the November 30, 2020.

The Landlords were successful with their Application and as such, are entitled to be reimbursed for the filing fee of \$100.00.

The Landlords have established a monetary claim, in the amount of \$4,050.00, which includes \$3,950.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenant's security deposit of \$825.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlords a Monetary Order for the balance of \$3,225.00.

Item	Amount
Unpaid rent for September 2020	\$650.00
Unpaid rent for October and November	3,300.00
Filing fee	100.00
Minus Security Deposit	-825.00
Total Monetary Order	\$3,225.00

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlords an Order of Possession to be effective on November 30, 2020 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. Should the Tenant 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 Section 67 of the Act, I grant the Landlords a Monetary Order for \$3,225.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: November 23, 2020

Residential Tenancy Branch