



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Treelorne Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNR-MT, MNDCT, MNRT
For the landlord: OPR-DR-PP, OPRM-DR, FFL

Introduction

On October 13, 2020 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”). Additionally, they applied for a monetary order for recompense of the cost of emergency repairs they made, as well as for compensation for other money owed.

On October 15, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 5, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matter

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable them to call in to this teleconference hearing

scheduled for 11:00 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice. The tenants do not have leave to reapply on this issue.

Similarly, the tenants did not attend to pursue their claim for monetary compensation. On these separate portions of their Application, the tenants do not have leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to compensation for other monetary loss pursuant to section 67 of the *Act*?

Is the landlord 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 landlord provided a copy of the tenancy agreement that appears in the evidence. The parties signed the agreement jointly on April 25, 2018 for the tenancy starting on May 1, 2018. The tenancy was a fixed term to end on April 30, 2019; however, it reverted to a month-to-month tenancy after that time. The rent payable was \$800 per

month, and the tenants paid a \$400 security deposit. By April 2020, the monthly rent was \$820 per month. On these points concerning the initial agreement, there is no evidence contrary to that provided by the landlord here.

The landlord provided a copy of the 10-Day Notice, issued October 2, 2020. This document gave the move-out date of October 13, 2020. This listed the failure by the tenants to pay the accumulation of rent for \$1,740 on October 1, 2020. The landlord served this document by attaching it to door of the rental unit. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on October 2, 2020.

A repayment plan form dated September 29, 2020 from the landlord to the tenants appears in the record. This provides that the landlord proposed a payment plan in line with rent payments during affected rent periods. The amount in arrears is \$400. This is broken down into four separate payments of \$100 each for November 2020 through to January 2021.

On the Application, the landlord listed an amount of rent owing of \$1,740. This is as indicated on the 10-Day Notice. In the hearing, the landlord provided further amounts of rent owing for the following months of November and December, bringing the total amount owing to \$2,530.41.

The landlord provided a 'Rent Roll' ledger document showing all transactions for payment of rent and utilities. This document shows an arrears for utilities in the amount of \$796.60. The landlord also claimed this amount in the hearing.

In the hearing, the landlord stated that the tenants have vacated the unit. This was the result of the landlord's own application for an end of tenancy on an expedited basis, due to subsequent events that took place in December 2020. The landlord obtained an Order of Possession from that separate hearing. By way of Write of Possession, bailiffs attended and removed the tenants from the unit on December 21, 2020.

The landlord also presented that their other monetary loss stemming from the tenancy is that of the cost of these bailiff services, where they removed the tenants on December 21, 2020. The landlord obtained the Write of Possession on December 16, 2020, and the landlord obtained the services of the bailiff on December 17, 2020. They presented that they have an invoice showing that transaction, with bailiff services requiring payment in advance before undertaking their duties. In the hearing, the landlord stated

this amount was \$2,200. They did not provide a copy of the invoice into the evidence as the service took place more recently.

Additionally, the landlord presented that the city of Kamloops officially declared the property a “nuisance”. This was due to police attendance to the unit. This added charges of \$44.80 and \$31.50.

The total amount of the landlord’s claim for rent amounts, utilities, and other monetary loss stemming from the tenancy is \$5,603.11.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenants paid for the security deposit. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

In the hearing, the landlord testified that they received an Order of Possession through a separate hearing process. The tenants have already vacated the unit. Therefore, the issue of the landlord’s application for an Order of Possession is already settled. For this reason, the landlord’s Application on this discrete point is dismissed. The tenancy already ended.

Concerning a monetary claim, the party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 26 outlines a tenant’s duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for September 2020 continuing on with a balance after that, and the months following through to December 2020. This is as represented on the landlord's "rent roll" document they put into evidence.

The landlord provided detailed evidence in the form of the payment plan they proposed, as well as the details on their ledger sheet. I find on a balance of probabilities that these amounts are accurate. As presented, I find the landlord is entitled to the amount of \$2,530.41 as they claim.

Similarly, the landlord claims \$796.60 for utility amounts owing. I find the "rent roll" document shows accumulated amounts and payments made by the tenants toward utilities over the entirety of the tenancy. These amounts are exclusively for power. From this evidence, I find it more likely than not that the tenants have an outstanding utility amount, and that the landlord has recorded the balance of those amounts accurately in their ledger. For this, I award the landlord the amount of \$796.60 as claimed.

The landlord presented a single receipt showing the municipality deeming the property to be a nuisance. The cost of RCMP attendance "between October 25 – November 24, 2020" is shown on the invoice as \$31.50. I so award this amount, stemming as it does from the tenancy, and being a cost imposed on the landlord. The landlord did not provide proof of the \$44.80 amount similarly charged by the municipality. With no evidence payment of this amount, I do not grant this amount to the landlord.

At the hearing stage, the landlord also claimed the amount they paid for bailiff services, for \$2,200. As stated in the hearing, they wish to amend their initial claim to include this separate portion for other money owed. I deny this amendment to their claim, coming as it does very near to this hearing date. Moreover, the landlord did not provide evidence to show this claimed amount. The landlord is free to apply for other monetary amounts – those which arise post-tenancy -- in a separate hearing process and may choose to so claim this bailiff amount.

In the hearing, the landlord inquired about offsetting the security deposit amount against money owing from the tenants. 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 \$3,358.51. After setting off the security deposit amount of \$400, there is a balance of \$2,958.51. I am authorizing the landlord to keep the security deposit and award the balance of \$2,958.51 as compensation for rent owing.

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

Conclusion

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$3,058.51. 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 *Act*.

Dated: January 5, 2021

Residential Tenancy Branch