



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRL-S, OPR-PP, MNDCL, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy be cancelled? If not, are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave the following testimony. The tenancy began on or about March 1, 2020. Rent in the amount of \$2000.00 is payable in advance on the first day of each month. At the outset of the tenancy the tenant paid a security deposit of \$1000.00 which the landlord still holds. The tenant failed to pay rent during the COVID – 19 pandemic when the provincial government declared a state of emergency. When the state of emergency was lifted, the landlord issued a repayment plan to the tenant to pay for all rental arrears in the amount of \$400.00 per month commencing on October 1, 2020. The tenant failed to pay rent and the repayment plan portion for the month of November 2020. The landlord testified that they did not receive payment for November until “January 7th or 8th”.

The landlord testified that the total amount of outstanding rent during the affected period during the pandemic was \$4000.00. The tenant was required to pay \$400.00 per month in addition to his rent as part of the repayment plan. The landlord testified that the tenant has only made 2 of the required 4 payments as of this hearing. The landlord testified that the tenant is consistently late in paying the rent. The landlord testified that rent has finally been caught up but the repayment plan portion for January and December are still outstanding leaving a total unpaid balance of \$3200.00. The landlord seeks this amount along with the recovery of the \$100.00 filing fee and an order of possession.

The tenant gave the following testimony. The tenant testified that he mailed out the cheques for November but for some reason the landlord didn't get them. The tenant testified that he paid the November rent and repayment portion on January 6, 2021. The tenant testified that all the rent is caught up but not the repayment portion.

Analysis

Residential Tenancy Policy Guideline 52 addresses the issue before me as follows:

A tenant who fails to pay an installment in a repayment plan or a prior agreement and who receives a 10 Day Notice to End Tenancy may, within 5 days after receiving the notice,

- pay the installment that was due, in which case the notice has no effect, or*
- dispute the notice by making an application for dispute resolution.*

Otherwise, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Although the tenant filed an application to dispute the notice, the tenant confirmed that he did not pay the November rent or November repayment portion until January 6, 2021. As it was paid two months late and not within the 5 days as required per the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the notice is valid and dismiss the tenants request to cancel the notice without leave to reapply.

Both parties confirmed that there is still \$3200.00 of unpaid rent outstanding as part of the repayment plan.

In this case, this required the tenants to vacate the premises by November 17, 2020. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the Act, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence of the parties, I am satisfied that the tenants continue to owe the landlord unpaid rent as per the repayment plan of \$3200.00. Under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$3300.00. I order that the landlord retain the \$1000.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants application 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: January 28, 2021

Residential Tenancy Branch