



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL, MNDCT, RR, OLC, LRE, CNR

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; 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;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. 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 recover the filing fee for this application?

Are the tenants entitled to an order allowing them to reduce the rent?

Are the tenants entitled to a monetary order as compensation for loss or damage under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that sets conditions or suspends the landlords right to enter the unit?

Are the tenants entitled to an order to compel the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began in 2005 with a current monthly rent of \$900.00 due on the first of each month. The landlord testified that on November 14, 2020 he personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for rent that was owing for October and November to ML. The landlord testified that the tenant has not paid for December or January either.

The landlord seeks \$3600.00 in unpaid rent and the recovery of the \$100.00 filing fee as well as an order of possession. The landlord testified that he never borrowed the tenants canoe. GT testified that he purchased the property and took possession of the property on December 1, 2020. GT testified that AK is acting on his behalf. GT testified that he has not received any rent from the tenants for December or January.

Counsel for the landlord submits that not only has the tenants filed outside of the legislated timeline, they have given contradictory testimony. Counsel submits that the tenant originally testified that the tenant stated rent was gifted to him but then later stated he had the money waiting for the landlord. Counsel submits that the tenant's testimony could not be relied upon and that the landlord should be given an order of possession.

The tenants gave the following testimony. JL testified that he was present when the landlord promised ML that he wouldn't have to pay the rent for September and October 2020. ML testified that the landlord damaged his canoe and that he was gifted the months of September and October 2020. The tenant testified that the property was sold and that nobody has asked for rent. ML testified that he has the money ready for pickup.

Analysis

The tenant first testified that he was gifted the rent for October and November 2020 but then later stated that the landlords didn't come pick up the rent for those months. The tenant did not provide documentary evidence to support his claim that he didn't have to pay the rent for those months. In addition, the tenant continued to withhold paying the rent even after he was served a notice to end tenancy for unpaid rent. The tenant's testimony was contradictory, illogical and unreliable. The tenant confirmed that he has not paid rent since October 2020.

I find that the tenants failed to pay their rent in full within five days of being served the 10 Day Notice. Although the tenants filed an application pursuant to section 46(4) of the Act, they did not do that within five days of having received the 10 Day Notice. However, I have made a decision on this matter based on the merits of the landlords claim and have provided the tenant a full opportunity to respond to that claim.

Based on all of the above, I find that the landlord is entitled to an order of possession. The notice to end tenancy is confirmed and is of full effect and force. In this case, this required the tenants to vacate the premises by November 24, 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 evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent. I find that the tenants have not paid the rent for the months of October 2020-January 2021; inclusive for a total of \$3600.00. I find that the landlord is entitled to that amount and the \$100.00 filing fee for a total award of \$3700.00.

The tenant sought a monetary order of \$5950.00 and a rent reduction for the damage to his canoe. The tenant application states that the amount sought is for the following :

“Aggregated damages and for reimbursement for damages landlord caused to my canoe while in his care. Aggregated damages include loss of sleep, invasion of privacy, harassment, false promises, misleading statements to deceive me, false accusations against me, deprivation of quiet peaceful enjoyment of the rental unit due his allowing squirrels in the attic causing disturbing noises during normal sleep hours. Loss of time due his performances as he attempts voiding the rental agreement, the Act.”

The tenant made allegations that the landlord damaged his canoe but was silent on the other issues as applied for despite being given numerous opportunities to do so. The tenant did not provide sufficient evidence to support this portion of his application, accordingly; I dismiss the monetary portion of the tenant's application.

The tenant has not been successful in any portion of their application; therefore the tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord has been successful in their application for the following:

Item	Amount
Unpaid October 2020 Rent	\$900.00
Unpaid November 2020 Rent	900.00
Unpaid December 2020 Rent	900.00
Unpaid January 2021 Rent	900.00
Filing Fee	100.00
Total Monetary Order	\$3700.00

The landlord is granted an order of possession and a monetary order for \$3700.00. The landlord may retain the security deposit.

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 29, 2021

Residential Tenancy Branch