



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

LL: MNDCL-S, MNRL-S, OPR, FFL
TT: CNR-MT, MNDCT, MNRT, OLC, RP, LRE

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67;
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- More time to file their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66;
- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord make repairs pursuant to section 33; and
- An order suspending or setting 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 sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”). The named respondents attended and were assisted by a friend.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord testified that the tenants have paid the amount of the rental arrears and they withdrew the portion of the application seeking a monetary award for unpaid rent.

Issue(s) to be Decided

Are the tenants entitled to additional time to file their application to cancel the 10 Day Notice? Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to any of the relief sought?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This periodic tenancy began in November 2018. The monthly rent is \$2,400.00 payable on the first of each month. A security deposit of \$1,200.00 was collected at the start of the tenancy and is still held by the landlord.

There was a rental arrear of \$4,050.02 as at November 6, 2020 when the landlord issued a 10 Day Notice. The parties confirm the 10 Day Notice was served on the tenants on that date in person. The tenants say they were unable to file their application to dispute the 10 Day Notice until December 30, 2020 as they were gathering documentation.

The parties agree that the tenants have paid the rental arrear in full as at the date of the hearing. The parties testified that the landlord indicated that all payments were being accepted for use and occupancy only and did not serve to reinstate the tenancy.

The tenants submit that the rental unit requires various repairs, work and maintenance which have been requested to the landlord. The tenants say that they purchased appliances using their own funds as the landlord failed to replace the items. The tenants now seek a monetary award for the cost of the appliances purchased.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 46(2) of the *Act* provides that a tenant may dispute a 10 Day Notice issued by a landlord by paying the overdue rent or filing an application within 5 days after the date the tenant receives the notice. Section 46(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present case the parties confirm that the 10 Day Notice was received by the tenants on November 6, 2020 and an application to dispute the notice was filed on December 30, 2020. The tenants gave some vague testimony that they needed to prepare their materials but no further explanation was given as to what documents they were unable to gather, where they were stored or the steps taken to attempt to file their application within the statutory deadlines. Based on the little submissions made, I am unable to find that there were difficulties for the tenant to prepare and file their application that can properly be characterized as exceptional circumstances.

I find that the tenant has failed to file an application for dispute resolution within the 5 days of service granted under section 46(2) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 44(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 16, 2020.

I accept the evidence of the parties that the landlord was clear that any payments accepted were for use and occupancy only and that they did not reinstate the tenancy. I find that the 10 Day Notice of the landlord complies with the form and content requirements of section 52 of the *Act* as it is signed and dated, provides the correct information of the parties, the rental unit and the basis for the tenancy to end. As such, I find that the landlord is entitled to an Order of Possession. As the effective date of the notice has passed, I issue a notice enforceable 2 days after service.

As this tenancy is ending I find it unnecessary to make a finding on the portions of the tenants' application pertaining to an ongoing tenancy including an order for repairs, an order of compliance or setting conditions on the landlord's right to enter the rental unit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. I find insufficient evidence in support of the portions of the tenants' application seeking a monetary award. I find the submission of the tenant that they have purchased appliances to not be a result of any breach on the part of the landlord. The vague testimony of the tenants that the appliances were malfunctioning or that they made requests for their replacement are not sufficiently supported in the documentary materials. I find that the tenants have not established their claim on a balance of probabilities and consequently dismiss this portion of the application.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenants. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenants' security deposit in satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$1,200.00 to \$1,100.00.

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: February 16, 2021

Residential Tenancy Branch