



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPUM-DR, FFL

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords identified only Tenant SD (the tenant) in their application for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants identified only Landlord SC (the landlord) in their application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Act*.

The tenant and both landlords 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. Since the landlord only needed Landlord BC, their spouse, to assist them in the event that there was a dispute regarding the service of documents and there was no such dispute, Landlord BC did not participate in the hearing. The landlord confirmed that they had authority to act on behalf of Landlord BC, their spouse. The tenant confirmed that they represented the interests of the other tenant identified in their application, their daughter. The landlord noted that the tenant was the sole name identified as the tenant on the Residential Tenancy Agreement (the Agreement) for this tenancy.

As the tenant confirmed that they received the 10 Day Notice posted on their door by the landlords on January 10, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As both parties confirmed that they received one another's dispute resolution hearing packages, I find that they were duly served

with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the commencement of this hearing, the parties agreed that the spelling of the name of the road where this rental unit is located is as it appears above and not as spelled in the tenants' application.

At the hearing, the landlord testified that they had not received any rental payment for February 2021, and requested that their monetary application be raised by \$1,700.00, to reflect this outstanding rent. As the tenant clearly realized that their rent for February 2021 was also outstanding, I allowed the landlord's request to increase the amount of the monetary claim sought at this hearing to \$5,991.00.

The landlord also said that they had just received another utility bill within the past 24 hours, for which the tenant was responsible for \$610.06. Although the landlord had provided a copy of that bill to the tenant shortly before this hearing, I refused to consider the landlord's request to have this amount added to the requested monetary order. I did so as the tenant had only just received this request and had not had a proper opportunity to review it and pay for these additional charges.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

On December 6, 2019, the tenant and the landlords signed the Agreement for a month to month tenancy that commenced that same day. Monthly rent is set at \$1,700.00, payable in advance on the first of each month. The landlords continue to hold the \$500.00 security deposit and \$550.00 pet damage deposit paid by the tenant when this tenancy began.

The landlords' 10 Day Notice identified a total of \$4,291.00 owing for rent and utilities that were unpaid as of January 10, 2021. This figure included \$1,700.00 for each of December 2020 and January 2021, plus \$791.00 in unpaid utilities.

The landlord gave undisputed sworn testimony that there was also at least two months of rent outstanding from the period prior to September 2020.

The landlord testified that if the tenant vacated the rental unit by February 15, 2021, that they could potentially locate a tenant for the last half of February.

The tenant testified that they owed rent and utilities to the landlord, but they were uncertain as to the total amount of utilities that was their responsibility. They did not dispute the landlord's claim for outstanding rent, or the landlord's assertion that rent remained owing from the period prior to September 2020.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 15, 2021, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to pay the landlord a total of \$6,050.00.
3. The tenant agreed to allow the landlords to retain the pet damage and security deposits for this tenancy in recognition of unpaid utilities for this tenancy.
4. The landlord agreed that their retention of the pet damage and security deposits for this tenancy was a means of compensating them for all utility payments that the tenant owes the landlord during the course of this tenancy.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of their applications and all issues in dispute arising out of this tenancy, including all monetary issues involving unpaid rent, unpaid utilities and the security deposit, and that they did so of their own free will and without any element of force or coercion having been applied.

During the hearing, the landlord consulted with Landlord BC to confirm that they were in agreement with the terms of their settlement agreement.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlords if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$6,050.00. I deliver this Order to the landlords in support of the above agreement for use in the event that the tenant does not abide by the terms of the above settlement. The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible after any failure to abide by the terms of this portion of their agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To give legal effect to the agreement reached between the parties, I order the landlords to retain the pet damage and security deposits for this tenancy.

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 08, 2021

Residential Tenancy Branch