



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL, CNR, LRE

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord identified all three tenants above as respondents in their application for:

- an Order of Possession for unpaid rent 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 tenants pursuant to section 72.

Tenants KO and JJ applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

In their application, the landlord noted that LF, identified by them as a Respondent, is a teenaged son of KO and JJ. As such and as LF has not signed the Residential Tenancy Agreement (the Agreement), LF is not responsible for the commitments made by KO and JJ with respect to this Agreement.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn oral testimony supported by written evidence that they served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on January 4, 2021. As Tenants KO and JJ (the tenants) applied to cancel that Notice on January 15, 2021, and included a copy of that Notice with their application for dispute resolution, I find that the tenants were deemed served with the landlord's 10 Day Notice on January 9, 2021, the fifth day after it was sent to them. I do so pursuant to sections 88 and 90 of the *Act*.

The landlord testified that they sent both tenants copies of their original dispute resolution hearing package in which they applied for a monetary award of \$1,300.00 for unpaid rent owing for January 2021 by registered mail on January 24, 2021. They also testified that they sent both tenants an amended application for a monetary award for an additional \$6,431.83 by registered mail on January 29, 2021. They provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. The landlord also testified that copies of their written evidence was included with the above packages. Based on the landlord's undisputed sworn testimony and written evidence, I find that the tenants were deemed served with the original application, the amended application and the landlord's written evidence in accordance with sections 88, 89 and 90 of the *Act* on the fifth day after they were mailed.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to an Order of Possession for unpaid rent or utilities? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties signed a fixed term Agreement that was intended to allow the tenants to reside in this rental unit from July 25, 2020 until August 31, 2021. According to the terms of the Agreement, monthly rent is set at \$2,550.00, payable in advance on the first of each month, plus utilities. The landlord said they continue to hold the \$1,275.00 security deposit and \$1,275.00 pet damage deposit for this tenancy, paid when the tenancy began.

The landlord provided written evidence supported by sworn testimony that the tenants were late paying their rent in full in October and December of 2020, and January and February of 2021. They entered into written evidence a copy of earlier 10 Day Notices

issued to the tenants for October and December 2020. They said that all of the rent for those two months was eventually received from the tenants. When they issued the 10 Day Notice in January, they identified \$1,300.00 as still owing as of the date of their issuance of that Notice. The landlord testified that the tenants have not paid anything further to the landlord since that time, which includes \$1,300.00 for January and \$2,550.00 for February 2021.

Although the landlord's initial application only sought the recovery of \$1,300.00 for unpaid rent owing for January 2021 and the recovery of their \$100.00 filing fee for their application, their amended application added the following items to their request for an overall monetary award totalling \$7831.83:

Item	Amount
Outstanding Water Bill as of Jan, 8, 2021	\$483.68
Estimated Water Bill Jan. 8, 2021 to Feb. 30, 2021(as in original)	209.74
Late Payment Fees (3 x \$25.00 each)	75.00
Future rent for February and March 2021 (2 x \$2,550.00 = \$5,100.00)	5,100.00
Photocopying costs	11.29
Registered Mailing costs	52.12
Future Cleaning costs	500.00
Additional Monetary Order Requested	\$6,431.83

As noted above, the landlord's amended application intended that these costs were to be added to the \$1,300.00 for unpaid rent owing from January 2021 and the recovery of the filing fee they had claimed in their original application.

The tenants' application to cancel the landlord's 10 Day Notice stated the following:

I have received an eviction notice for unpaid rent and I have paid rent..

She entered my unit without permission.

Other than a copy of the 10 Day Notice, the tenants provided no further explanation or evidence for consideration in this matter.

Analysis- 10 Day Notice to End Tenancy for Unpaid Rent

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not 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.” Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application to dispute the 10 Day Notice within the statutory time limits for doing so, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice.

Based on the landlord’s undisputed sworn testimony and written evidence and the tenants’ failure to attend the hearing or provide any substantive written evidence to the contrary, I find on a balance of probabilities that the tenants did not pay all of their January 2021 rent within five days of receiving the 10 Day Notice. There is undisputed evidence that the tenants have made no further payments of any kind to the landlord after having received the 10 Day Notice. Under these circumstances, I dismiss the tenants’ application to cancel the 10 Day Notice and allow the landlord’s application to end this fixed term tenancy on the basis of the 10 Day Notice the landlord issued to the tenants in January 2021.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Landlord’s Monetary Claim

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants have breached the terms of their Agreement resulting in losses or damages for which the landlord is entitled to compensation.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not 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.”

There is undisputed evidence that the tenants have not paid \$1,300.00 in rent that became owing on January 1, 2021, as well as \$2,550.00 that was due on February 1, 2021. As I find it unlikely that the landlord will be able to rent these premises for any part of February 2021, I allow the landlord’s application for a monetary award of \$1,300.00 for January 2021, and \$2,550.00 for February 2021.

As it is unclear as to whether the landlord will be able to locate new tenants for these premises for March 2021, I dismiss this portion of the landlord’s amended application with leave to reapply. I do so as I find the landlord’s amended claim for the recovery of lost income for March 2021 is premature.

There is undisputed sworn testimony and written evidence before me that the Agreement contained a provision whereby the landlord is entitled to charge a late payment fee of \$25.00 for each month when rent is paid after the first of the month. As I am satisfied that this has occurred at least four times, for the months of October and December 2020, and January and February 2021, I issue a monetary award in the landlord’s favour in the amount of \$100.00.

As discussed during the hearing, the landlord’s claim for unpaid utilities is also premature as the landlord said that they only provided the tenants with copies of the water utility bill in late January 2021. At the time, they submitted their amended application, 30 days had not yet elapsed since the landlord gave copies of a request for

payment of the utility bill that covered the period ending on January 8, 2021. I also note that the request for unpaid utilities for the period from January 8, 2021 to the end of February 2021 has provided only estimates and no utility bill has yet been received by the landlord for this period. For these reasons, I dismiss the landlord's claim for unpaid utility bills with leave to reapply as I find these claims have also been submitted prematurely.

As noted at the hearing, the only dispute resolution hearing related costs a party is able to recover from the other party is the filing fee. For this reason, I dismiss the landlord's application for a monetary award of photocopying and registered mailing costs without leave to reapply. Since the landlord has been successful in much of their application, I allow them to recover their \$100.00 filing fee from the tenants.

The landlord's original application made no mention of a claim for damage to the rental unit. Since the landlord has only estimated cleaning costs for this tenancy and has not yet obtained possession of the rental unit, I find that the landlord's claim of \$500.00 for their estimated cleaning costs is premature. I dismiss this portion of the landlord's amended application with leave to reapply.

Although the landlord's application does not seek to retain the tenants' security or pet damage deposits, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain these deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenants' application is dismissed without leave to reapply.

I allow the landlord to end this tenancy on the basis of the 10 Day Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allow the landlord to recover unpaid rent, late fees and their filing fee, and to retain the security and pet damage deposits for this tenancy:

Item	Amount
Unpaid Rent January 2021	\$1,300.00
Unpaid Rent February 2021	2,550.00
Late Payment Fees (4 x \$25.00 each= \$100.00)	100.00
Less Security and Pet Damage Deposits	2,550.00
Filing Fee	100.00
Total Monetary Order	\$1,500.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's amended application for loss of rent for March 2021, for unpaid utilities and for damage arising out of this tenancy is dismissed with 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: February 18, 2021

Residential Tenancy Branch