

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, OPRM-DR, FFL (landlord)**
FFT, CNR, AAT, PSF (tenant)

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 46 of the *Act* for Unpaid Rent;
- a Monetary Award for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 46 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*;
- an order for services or facilities pursuant to section 27 of the *Act*; and
- access to the rental unit pursuant to section 30 of the *Act*.

Both the landlord's agent, M.C. and the tenant appeared at the hearing. In addition, the property owner's son, S.H. attended the hearing as an agent for the landlord. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both parties acknowledged receipt of each applications for dispute and then tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy. The landlord and the tenant are both found to have been duly served in accordance with the *Act* pursuant to sections 88 & 89 of the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy? If not, is the landlord entitled to an Order of possession?

Is either party entitled to a return of the filing fee?

Should the landlord be directed to provide services or facilities?

Should the landlord be directed to provide access to the rental unit?

Background and Evidence

Both parties confirmed this tenancy began on July 1, 2014 with a further tenancy agreement signed between the parties on May 1, 2019. Rent is \$2,000.00 per month and a security deposit of \$1,300.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord issued a 10 Day Notice to End Tenancy ("10 Day Notice") on December 16, 2020. The landlord's agent explained the tenant had failed to pay rent for October through December 2020 and from January 2021 to the present month. The landlord sought an Order of Possession along with a Monetary Order of \$6,100.00 representing the unpaid rent for October, November and December 2020, along with a return of the filing fee.

The tenant acknowledged rent had not been paid as described by the landlord but argued he should not have to pay it due to various issues associated with the rental unit. Specifically, the tenant explained he did not have access to the storage room, the parking garage and the mail room. The tenant said the landlord had refused to provide him with a fob to gain access to these amenities and he therefore declined to pay rent.

Analysis – 10 Day Notice

At the hearing the tenant acknowledged that he had failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant has disputed the 10 Day Notice, little evidence was presented at the hearing as to why this rent remained unpaid. The tenant argued he was denied access to various amenities after the landlord had failed to provide him with a replacement fob. Section 26(1) of the *Act* states, "A tenant must pay rent when it 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."

I find no evidence to indicate the tenant had a prior order from the RTB to withhold rent and find no reason why the rent should be withheld as described per section 26(1).

In accordance with sections 26(1) & 46(5) of the *Act*, the tenant's failure to pay rent has led to the end of this tenancy. I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

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 landlords to prove their entitlement to a claim for a monetary award.

Further, section 7(1) notes, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for the damage or loss that results."

During the hearing, the tenant acknowledged that rent was unpaid and did not dispute the landlord's testimony that rent was unpaid for November & December 2020, along with January, February and March 2021. Pursuant to section 67 and section 7 of the *Act*, I find the landlord is entitled a monetary award as requested in the application, equivalent to \$6,000.00. As the landlord did not apply to amend their application to recover rent for January, February or March 2021, they are at liberty to apply for these unpaid rents at a later date.

As this tenancy is ending by way of the 10 Day Notice, the tenant's application is dismissed in its entirety.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction for the monetary award granted. I note, the landlord is entitled only \$1,000.00 of the \$1,300.00 collected per section 19 of the *Act* which states, "A landlord must not require or accept either a security or pet deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement." Any amount collected over the ½ of one

month's rent must be returned to the tenant or addressed in a separate application if it relates to fob deposits or other such deposits.

As the landlord was successful in their application, they may recover the filing fee pursuant to section 72.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. The landlords are provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$3,550.00 in favour of the landlords as follows:

Item	Amount
Unpaid rent for October 2020	\$2,000.00
Unpaid rent for November 2020	2,000.00
Unpaid rent for December 2020	2,000.00
Less Security Deposit	(-1,000.00)
Return of Filing Fee	100.00
Total =	\$5,100.00

Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 16, 2021

Residential Tenancy Branch