



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPRM-DR, OPR-DR, MNDL-S, MNDCL-S, FFL, CNR,
MNDCT, RR, RP, AAT, PSF, LAT, LRE, OLC, FFT

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- 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 the landlord to provide services or facilities required by law 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;

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord J.H. (the landlord) attended the hearing via conference call and provided affirmed testimony with the assistance of his translator, J.L. The landlord H.M.P. did not attend and was unrepresented. The tenant M.B. did not attend and was not represented. The tenant Y.D.A. (the tenant) attended the hearing via conference call and provided affirmed testimony.

The landlord stated that the tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 13, 2021 and has submitted a copy of the completed proof of service document as confirmation. The tenant confirmed receipt of this package.

I accept the undisputed affirmed evidence of both parties and find that I am satisfied that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

The hearing was paused 10 minutes to allow both named parties an opportunity to attend, submit and participate in the conference call hearing. At 11:10 am the hearing commenced in the absence of the landlord, H.M.P. and the tenant, M.D.B.

The tenant, Y.D.A. stated that despite his name listed on the tenants' application filed, he was not a party to the application filed. The tenant, Y.D.A. stated that he had vacated the rental unit on December 12, 2020 and requests that his name be removed from the tenants' application. The landlord confirmed the tenant's details and did not object to the removal of the tenant from the tenants' application. As such, the tenant, Y.D.A. shall be removed from tenants' application.

The hearing proceeded on the landlords' application only.

At 12:04pm, the hearing concluded and in the absence of the tenant's participation the tenant's application was dismissed without leave to reapply.

At 12:05pm, the tenant, M.D.B. called into the conference call hearing. The tenant was advised that the hearing had concluded.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent, for damage, for money owed or compensation and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on May 1, 2020 on a fixed term tenancy ending on April 30, 2021 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 21, 2020. The monthly rent is \$2,090.00 payable on the 1st day of each month. A security deposit of \$1,045.00 was paid.

The landlord stated that a 10 Day Notice to End Tenancy for Unpaid Rent dated December 22, 2020 (the 10 Day Notice) was served on the tenants via Canada Post Registered Mail. The tenant, Y.D.A. confirmed receipt of the 10 Day Notice as stated by the landlord. The 10 Day Notice states that the tenants failed to pay rent of \$2,090.00 that was due on December 1, 2020 and provides for an effective end of tenancy date of December 31, 2020.

The landlord provided affirmed testimony that the tenant, M.D.B. still occupies the rental unit as of the date of this hearing and has continued to not pay any rent for January, February and March 2021 at \$2,090.00 per month. The landlord stated that as of the date of this hearing the tenants are in arrears for \$8,360.00. The tenant, Y.D.A. confirmed that rent for December 2020 had not been paid and as a result the tenant agreed to vacate the rental unit as per the 10 Day Notice. The tenant, Y.D.A. stated that he had agreed to try and pay \$1,000.00 to the landlord for the unpaid rent for December 2020.

During the hearing the landlord also referred to a \$500.00 claim for damages and requests that this portion of the claim be cancelled at this time.

During the hearing the landlord clarified that the request for compensation of \$2,090.00 was made in error as it pertains to loss of rent for March 2021 which the landlord has requested as part of unpaid rent.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent dated December 21, 2020 on December 22, 2020 via Canada Post Registered Mail. The landlord's service was confirmed by the tenant, Y.D.A. and that December 2020 rent was not paid. I also find that the landlord has provided undisputed affirmed evidence that the tenant, M.D.B. still occupies the rental unit and that neither of the tenants have paid any rent for December 2020, January 2021, February 2021 and March 2021.

On this basis, I find that the landlord has provided sufficient evidence to satisfy me of unpaid rent as claimed by the landlord. The 10 Day Notice dated December 21, 2020 is upheld and the landlord is granted an order of possession to be effective 2 days after it is served upon the tenants. I also find based upon the undisputed affirmed evidence of both parties that the landlord has provided sufficient evidence of unpaid rent as claimed for \$8,360.00.

The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,045.00 security deposit in partial satisfaction of this claim.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$7,415.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those Courts.

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: April 9, 2021

Residential Tenancy Branch