



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, OPR-DR, OPRM-DR OLC, CNR, FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 18, 2021 in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

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

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant testified in the hearing that he had found new accommodation, and would be moving out. 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 agreed that the tenancy would end by mutual consent at noon on May 31, 2021. Accordingly, the landlords will be provided with an Order of Possession for May 31, 2021, and the applications pertaining to 10 Day Notice were cancelled.

Preliminary Issue – Admission of Late Evidence

At the beginning of the hearing both parties confirmed receipt of each other's applications. The tenant confirmed receipt of the landlord's evidentiary materials, and accordingly, I find both parties duly served with these documents in accordance with the *Act*.

The tenant testified that he had served the landlords with his evidence in their mailbox after speaking to his legal counsel on April 20, 2021. The tenant testified that he did not have much time to submit evidence after the consultation. The landlords testified that they did not receive this evidence.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case, the tenant testified that he was unable to meet the required timelines due to the fact that the adjourned hearing was set less than 14 days later.

In this case, the late evidence consisted of some written statements by the tenant, as well as copies of text messages between the two parties, totalling 6 pages.

After discussing the matter with both parties, the landlords confirmed that they wished to proceed with the scheduled hearing, and consented to the admission of the statements and evidence as read out by myself. During the hearing, I read the statements and text messages submitted by the tenant, which will be considered for the purposes of this hearing by consent of both parties.

Preliminary Issue – Tenant's Other Claims

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, both parties have filed applications. As priority was given to hear submissions on the main and preliminary issues related to the 10 Day Notice and the payment of rent within the time allotted, the remainder of the tenant's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the parties entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around it are set out below.

Both parties confirmed that this month-to-month tenancy began on May 1, 2020. Monthly rent is set at \$1,150.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$600.00, which they still hold. It is undisputed by both parties that prior to January 1, 2021, the tenant made cash payments for his monthly rent, and was never issued any receipts for these payments.

The landlords testified that they had never issued any receipts prior to January 1, 2021 as the tenant and the landlords had a positive relationship, and the tenant had informed the landlords that the tenant did not want receipts. The landlords' daughter SG testified that her mother had asked the tenant whether the tenant wanted receipts, and the tenant replied that he did not. The landlords are seeking a monetary order for the outstanding rent, which they testified was \$750.00 for November 2020 and \$1,150.00 for December 2020.

The tenant disputes that he had informed the landlords that receipts were not required, and testified that the landlords had only started to issue receipts in January 2021, after the application by the tenant was filed disputing the 10 Day Notice to End Tenancy and for the landlords to comply with the *Act*. The tenant testified that he had paid all his monthly rent in full, and the landlords had only served with him with a 10 Day Notice to End Tenancy for Unpaid Rent following a dispute between the parties in December of

2020. The tenant testified that he had no way to support that his rent payments were made as the landlords had never provided him proof of payment.

Analysis

The landlords are seeking a monetary order for unpaid rent.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlords must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claim on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 26(2) of the *Act* states that a landlord must provide a tenant with a receipt for rent paid in cash. In this case, it is undisputed that the landlords had never provided the tenant with any receipts prior to January 2021. Although the landlords had provided an explanation for why they had failed to comply with section 26(2) of the *Act*, the *Act* is specific in its requirements that the landlords must provide the receipts. Furthermore, the tenant disputes having given permission for the landlords to ignore this requirement.

In consideration of the landlords' monetary claim, I must note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. In this case, the burden of proof is on the landlords to support that the tenant failed to pay the outstanding rent in the amounts claimed. I have considered the testimony and evidence of both parties, and although the landlords may have had permission to ignore section 26(2) of the *Act*, I do not find that the landlords had provided sufficient evidence to support the non-payment of rent for November and December 2020. In light of the fact that the standard practice of the landlords at that time was to not issue receipts for cash payments, I have no way to ascertain whether the rent was paid or not, and in what amounts. I am not satisfied that the landlords had provided sufficient evidence to support their monetary claim. Accordingly, I dismiss the landlords' monetary claim for unpaid rent without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlords were not successful in their application, I dismiss their application to recover the filing fee without leave to reapply.

As the tenant had agreed to move out on May 31, 2021 by way of mutual agreement, and as I was not required to make a decision on the merits of the tenant's case, I dismiss the tenant's application to recover their filing fee without leave to reapply.

Conclusion

As both parties had mutually agreed that this tenancy would end at noon on May 31, 2021, as discussed with them during the hearing, I issue an Order of Possession to the landlords, which is to take effect by noon on May 31, 2021. The landlords are provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) does not abide by this Order. 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 dismiss the landlords' monetary claim for unpaid rent without leave to reapply.

I dismiss both party's applications to recover the filing fee without leave to reapply.

I dismiss the remainder of the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable timelines.

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 30, 2021

Residential Tenancy Branch