



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT, OPRM-DR, OPR-DR, MNDCL, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 16, 2021 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 18, 2021 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Parties reached a settlement agreement as set out below. The Parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the Parties understood the nature of this full and final settlement of this matter.

Preliminary Matter

The Tenant states that they made an application to amend the original application to add claims in relation to repairs, a rent reduction and compensation.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. It is noted that no application to amend the original application can be found. Even if the Tenant made an amending application, I decline to consider the claims for repairs, rent reduction or compensation as these matters are not related to whether or not the tenancy will and or whether or not rents are paid. These claims are therefore dismissed with leave to reapply.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The tenancy will end at 1:00 p.m. on June 15, 2021;**
- 2. The Tenant owes unpaid rent for March, April and May 2021;**
- 3. The Tenant agrees that the Landlord is also entitled to rent for the period June 1 to 15, 2021 inclusive;**
- 4. The matter of rent for February 2021 is left to the determination of the Arbitrator; and**
- 5. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Remaining Issue(s) to be Decided

Is the Landlord entitled to unpaid rent for February 2021?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on January 25, 2021. Rent of \$5,500.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,750.00 as a security deposit. The

Tenant failed to pay rent for February 1, 2021 and on February 9, 2021 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent.

The Landlord claims \$5,500.00.

The Tenant states that this amount was sent to the Landlord on February 12, 2021 and received on February 17, 2021. The Tenant provides a copy of a wire transfer confirmation indicating this payment. The Landlord states that they have not received any wire transfer.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the Tenant's supported evidence of the payment of rent for February 2021, I find on a balance of probabilities that this rent has been paid. I therefore dismiss the Landlord's claim for this unpaid rent.

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the mutual agreement reached during the hearing, I find that the Parties have settled their dispute as recorded above under the heading "Settlement Agreement". In order to give effect to this agreement I grant the Landlord an order of possession effective 1:00 p.m. on June 15, 2020. I also grant the Landlord a monetary order for the agreed rents owed to the Landlord of **\$19,250.00**. This represents the Landlord's entitlement as agreed for March, April, May and for the period June 1 to 15, 2020. As the Landlord has not been found entitled to rent for February 2021, this amount is not included in the monetary order.

As both Parties sought recovery of their filing fees and as the majority of the dispute was resolved by mutual agreement, I decline to award either Party with recovery of their filing fees and these claims are dismissed.

It is noted that the Landlord did not make any submissions in relation to its compensation claim for utilities. As this may have been an oversight, this claim is dismissed with leave to reapply.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$19,250.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on June 15, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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 Act.

Dated: May 25, 2021

Residential Tenancy Branch