



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AS, OLC, RP
 OPU-DR, OPUM-DR, FFL

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on Feb 7, 2021. One of the Tenants applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 3, 2021, for an order that the Landlord comply with the *Act*, to request an order that the Landlord make regular repairs to the rental unit, and for an order to allow them to sublet the tenancy.

The Landlord’s Direct Request Application was made on February 11, 2021. As one of the Tenant’s had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent or Utilities, for a monetary order for unpaid rent and utilities and to recover their filing fee.

An Agent for the Landlord (the “Landlord”) and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence

submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Removal of Respondent

During these proceedings, it was noted that the Landlord had listed a third respondent to these proceedings who was not a signatory to the tenancy agreement for this tenancy. Both the Landlord and the Tenants submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the person, initials J.P.F., lived in the rental property but had not signed the tenancy agreement. As this person did not sign the tenancy agreement, I find that this person is an occupant of the rental property but not a tenant under the tenancy agreement. As such, I find it appropriate to remove their name, as a respondent to this processing.

I will continue in this proceeding with the two remaining respondents, F.H. & J.S.T., who are signatories, as joint tenants to the tenancy agreement before me.

Preliminary Matters - Related Issues

I have reviewed the Tenant's application, and I note that they applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to make regular repairs to the rental unit, for an order for the Landlord to comply with the Act, and for an order to allow them to assign a sublet to the rental unit.

Issues to be Decided

- Should the Notice issued on February 3, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Tenants had originally moved into this rental property as sub-tenants under a previous tenancy and that when that previous tenancy ended, due to an order of the Residential Tenancy Branch, these two Tenants entered into a signed tenancy agreement with the Landlord and remained on the rental property. The parties also agreed that there were to be three joint tenants under this tenancy agreement but that the third person had refused to sign the tenancy agreement even though they continued to live in the rental property, with the two tenants who had signed this tenancy agreement.

The tenancy agreement recorded that this tenancy started on January 1, 2021, as a month-to-month tenancy and that rent in the amount of \$2,500.00 is to be paid by the first day of each month. The parties agreed that the Tenants had not paid a security deposit or pet damage deposit to the Landlord for this tenancy.

The Landlord testified that the Tenants had not paid the rent for February, March, April, and May 2021 in the amount of \$10,000.00 for this tenancy. The Landlord requested an order of possession and a monetary order for the outstanding rent for this tenancy.

The Tenant J.S. testified that they had called the Landlord on February 4, 2021, to advise them that they had moved out of the rental unit and would be ending their

tenancy. When asked, Tenant J.S. testified that they had not provided written notice to the Landlord to end the tenancy agreement. The Tenant J.S. testified that they had not paid rent for February, March, April, or May 2021.

The Tenant F.H. testified that they had paid their rent for February 2021 but that when they found out that Tenant J.S. had moved out, they cancelled their rent payment for February 2021. The Tenant F.H. testified that as of this date of this hearing, they had not paid the rent for February, March, April, or May 2021 for this tenancy, but that they had continued living in the rental unit.

The Landlord testified that the Tenants also owe \$2,859.72 in hydroelectricity bills for this tenancy, at an approximate rate of \$714.75 per month. The Landlord submitted two hydroelectricity documents and a tenancy ledger into documentary evidence. The Landlord is requesting a monetary order for the unpaid hydroelectricity bills for this tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for February, March, April, and May 2021. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I dismiss the Tenant's application to cancel the 10-Day Notice to end tenancy for unpaid rent issued on February 3, 2021.

Section 55 (1) of the *Act* states the following:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the 10-Day Notice, and I find that this Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application to dispute the Notice to end tenancy, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award in the amount of \$10,000.00 in unpaid rent for this tenancy, for the months of February 2021, March 2021, April 2021, and May 2021.

As for the Landlord's request for \$2,859.72 in unpaid hydroelectricity bills for this tenancy, I have reviewed the hydroelectricity documents submitted into evidence by the Landlord, and I find that these documents are insufficient to prove their full claim. First, one of these documents is a bill, for the billing period between November 21, 2020, to

January 6, 2021, in the amount of \$1,052.53. As this Tenancy agreement started as of January 1, 2021, I find that the majority of the requested amount included in this bill is due under a different tenancy. The Landlord resolution for the amount between November 21, 2020, to December 31, 2020, would be to have a hearing against the Tenant listed on the Tenancy agreement for that period. As this tenancy started on January 1, 2021, I find that these Tenants owe the portion of this bill between January 1, 2021, to January 6, 2021,

As for the second document submitted into evidence by this Landlord to support their claim for unpaid utilities between March 6, 2021, to May 6, 2021, in the amount of 694.00, I find that this is not a bill but a screen capture of the Landlord online account, showing a “projected” amount that may be due for the billing period in the amount of 694.00 and a past due amount of \$2165.72. As this is not a bill, I find it to be insufficient to prove, to my satisfaction, the true amount due for this utility payment billing period under this residential tenancy agreement.

Finally, I find that the Landlord has not provided any documentary evidence to support their claim for the billing period of January 7, 2021, to March 8, 2021.

After reviewing all of the documentary evidence submitted by the Landlord, I find that the Landlord has submitted sufficient evidence to prove their entitlement to 6 days worth of hydroelectricity charges in the amount of \$137.28, at the per diem rate of \$22.88 per day. The remainder of the Landlord’s claim for unpaid utilities is dismissed.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that they are entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlords a monetary order of \$10,237.28, consisting of \$10,000.00 in outstanding rent, \$137.28 in unpaid utilities and the recovery of the \$100.00 filing fee for this hearing.

Conclusion

The Tenant's Application to cancel the 10-Day Notice, issued on February 3, 2021, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$10,237.28**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. 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: May 11, 2021

Residential Tenancy Branch