



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 LL: OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants’ Application was made on February 16, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 10, 2021 (the “10 Day Notice”);

The Landlord’s Application for Dispute Resolution was made on February 22, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent and utilities;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant D.S. and the Landlord attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Applications and documentary evidence packages. As no issues were raised with respect to service and receipt of the above mentioned documents, I find that they were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 15, 2020. Currently, the Tenants are required to pay rent in the amount of \$3,900.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,950.00 which the Landlord continues to hold. The Landlord submitted a copy of the tenancy agreement in support.

The Landlord testified the Tenants did not pay rent when due in January and February 2021. The Landlord subsequently served the Tenants in person on February 12, 2021 with the 10 Day Notice dated February 10, 2021 with an effective date of February 21, 2021. The Landlord testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$7,800.00, as well as \$1,677.00 for utilities to the Landlord which was due on February 1, 2021.

The Landlord stated that since serving the 10 Day Notice, the Tenants have not paid any amount of rent or utilities to the Landlord. Currently, the Landlord stated that the Tenants owe rent in the amount of \$19,500.00 for rent from January to May 2021. Furthermore, the Tenants have not paid utilities in the amount of \$1,677.00. The Landlord added that the Tenants also owe for cable and internet bills in the amount of \$961.00.

The Tenant responded and confirmed having received the 10 Day Notice on February 12, 2021. The Tenant disagreed with the amount of rent owing. The Tenant stated that he paid for January 2021 rent, however, did not provide any evidence in support of the rent payment made. The Tenant confirmed that he owes rent to the Landlord for the remaining months.

The Tenant further agreed that he owes utilities in the amount of \$1,677.00 to the Landlord. The Tenant stated that he did not pay this amount as the Landlord has not yet provided him with the bill.

The Tenant disagreed with the amount of \$961.00 being sought by the Landlord for cable and internet from November 2020 to February 2021. The Tenant stated that the agreement between the parties was that the Tenant is required to pay \$100.00 per month to the Landlord for cable and internet. The Landlord stated that the Tenant purchased pay-per view movies which increased the bill amount.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord served the Tenant in person on February 12, 2021 with the 10 Day Notice dated February 10, 2021 with an effective vacancy date of February 21, 2021. The Tenant confirmed having received the 10 Day Notice on February 12, 2021. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenants had until February 17, 2021 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The Tenants submitted their Application on February 16, 2021 which is within the required time limit.

During the hearing, the Tenant acknowledged that he has not paid the full amount of rent and utilities which is indicated on the 10 Day Notice, within 5 days after receiving the 10 Day notice. As such, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

In light of the above, I dismiss the Tenants' Application without leave to reapply. Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is

dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlord is seeking a monetary order for loss of rent from January to May 2021. The Tenant agreed that he has not paid rent to the Landlord from February to May 2021. The Tenant stated that he paid rent for January 2021, however, has provided no evidence in support. In this case, I find that it is more likely than not that the Tenant failed to pay rent for January 2021. As such I find that the Landlord is entitled to monetary compensation in the amount of **\$19,500.00** for unpaid rent from January 2021 to May 2021.

Regarding the utilities, I accept that the Tenant agreed that he is required to, but has not yet paid the utilities in the amount of \$1,677.00 to the Landlord. As such, I find the Landlord is entitled to monetary compensation in the amount of **\$1,677.00**.

With respect to the Landlord's claim for unpaid cable and internet, the Landlord is claiming for \$961.00 from November 2020 to February 2021. The Tenant stated that the parties had agreed to the Tenant only being required to pay \$100.00 per month. I find that the tenancy agreement does not specify the amount of cable and internet that the Tenant is required to pay to the Landlord each month. As such, I accept the Tenant's testimony that he was required to pay \$100.00 per month to the Landlord. I accept that the Tenant failed to pay \$100.00 per month to the Landlord from November 2020 to May 2021. As such, I find that the Landlord is entitled to monetary compensation in the amount of $(\$100.00 \times 7 = \textbf{\$700.00})$.

Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim. Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$, which has been calculated as follows:

Claim	Amount
Unpaid Rent:	\$19,500.00
Unpaid Utilities:	\$1,677.00
Unpaid Cable/Internet	\$700.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-(\$1,950.00)</i>
TOTAL:	\$20,027.00

Conclusion

The Tenants have failed to pay rent and utilities and has breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$20,027.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2021

Residential Tenancy Branch