



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPRM-DR, OPR-DR, FFL**
 TT: CNR, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order suspending or setting conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 70;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords’ agent primarily spoke on behalf of the landlords.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlords applied to amend the amount of their monetary claim indicating that since they filed their application additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as rent coming due is reasonably foreseeable I increase the amount of the landlords' monetary claim from \$1,500.00 to \$6,000.00.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Is the tenant entitled to any of the relief sought?

Is either party entitled to recover their filing fee from the other?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed term tenancy began on October 31, 2020. The monthly rent is \$1,500.00 payable on the first of each month. A security deposit of \$750.00 and pet damage deposit of \$750.00 were paid at the start of the tenancy and are still held by the landlords. The tenant did not pay rent for March 1, 2020 and the landlord issued a 10 Day Notice dated March 2, 2020. The tenant has not made any subsequent rent payments and there is a rental arrear of \$6,000.00 as at the date of the hearing.

The tenant gave some testimony regarding how they felt entitled to not pay the rent and believe they are entitled to compensation for what they believe to be misconduct and abuse on the part of the landlords.

Analysis

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid any rent since March 2020 for this tenancy.

Pursuant to 26(1) of the *Act*, 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.

I find the tenant's excuses for not paying rent to have no basis in legislation, logic or equity. I accept the evidence of the parties that monthly rent in the amount of \$1,500.00 is payable on the first of each month pursuant to the tenancy agreement. I accept the undisputed evidence of the parties that the tenant has not paid rent as required.

I therefore find that the landlords have established, on a balance of probabilities, their entitlement to an Order of Possession. As the effective date of the 10 Day Notice of March 2, 2020 has passed, I issue an Order effective 2 days after service on the tenant.

As this tenancy is ending, I find it unnecessary to make a finding on the portions of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that the tenant has failed to pay rent as required under the tenancy agreement and that there is a rental arrear of \$6,000.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlords' favour for that amount.

As the landlords were successful in their application, they are also entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

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

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$4,600.00, allowing for recovery of the unpaid rent and filing fees and to retain the security and pet damage deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: June 10, 2021

Residential Tenancy Branch