



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, RP, OLC, FFT, MNDCT, CNL
 LL: OPRM-DR, OPR-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 submitted an Application for Dispute Resolution on March 9, 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;
- an order to cancel a Two Month Notice to End Tenancy;
- an order for regular repairs;
- an order that the Landlord comply with the Act;
- an order granting the return of the filing fee.

On May 3, 2021 the Tenants submitted an amendment to their Application to include a claim for a monetary order for damage or compensation.

The Landlord’s Application for Dispute Resolution by Direct Request was made on March 24, 2021 (the “Landlord’s Application”), however, since the Tenants had already applied to cancel the 10 Day Notice, the Landlord’s Application was scheduled for a participatory hearing. The Landlord applied for the following relief, pursuant to the *Act*:

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

The Tenants H.J., B.J, and the Landlord’s Agent A.W. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed that the

tenancy ended on April 30, 2021. As such, the Tenants' claims for an order cancelling a 10 Day Notice to End Tenancy, an order to cancel a Two Month Notice to End Tenancy, an order for regular repairs, and an order that the Landlord comply with the Act are now moot, and therefore dismissed without leave to reapply. Similarly, the Landlord's claim for an order of possession is also moot and therefore dismissed without leave to reapply. The hearing continued based on the Tenants' and the Landlord's monetary claims.

The Tenants stated that they served the Landlord with the amendment to their Application by Registered mail. The Landlord's Agent stated that he did not receive the amendment and was therefore unprepared and was unable to respond to the monetary claim. The Tenants stated that they provided evidence of such service, however, the evidence relating to the registered mailing of the amendment could not be located in the Tenants' documentary evidence.

According to the Residential Tenancy Branch Rules of Procedure 4.6 Serving an Amendment to an Application for Dispute Resolution:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the *Residential Tenancy Act*.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

In this case, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord was sufficiently served with the Tenants' amendment to their Application for monetary compensation. As such, I dismiss this claim with leave to reapply.

The Landlord's Agent stated that he served the Landlord's Application and documentary evidence to the Tenants. The Tenants confirmed receipt. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Landlord's Agent stated that he amended the Landlord's Application to include monetary claims for damages which he uploaded to the dispute access site. I note that the RTB 42T form used by the Landlord states:

"This paper form must be submitted in person at a Service BC Centre that accepts RTB forms or the Burnaby Residential Tenancy Branch office. Do Not upload this form to the Dispute Access Site."

As the Landlord did not submit the Amendment to a Service BC Officer or the Burnaby Residential Tenancy Branch Office, I find that the amendment was not processed accordingly. As such, the Landlord's claims for damages will not be considered in this decision. The Landlord is at liberty to reapply for such claims.

The hearing continued based on the Landlord's monetary claim for unpaid rent, which was included in the Landlord's original Application, which was received by the Tenants. 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. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. 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 April 30, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$2,800.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,400.00 which has since been returned to the Tenants. The tenancy ended on April 30, 2021.

The Landlord's Agent stated that the Tenants failed to pay the full amount of rent to the Landlord in March 2021. The Landlord's Agent stated that currently, the Tenants owe

the Landlord \$1,900.00 in unpaid rent. During the hearing, the Tenants agreed that they failed to pay \$1,900.00 in rent to the Landlord. If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

Analysis

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.

I accept that the parties agreed that the Tenants owe the Landlord \$1,900.00 in unpaid rent for March 2021. As such, I find that the Landlord is entitled to a monetary award in the amount of \$1,900.00 for unpaid rent. As the Landlord was successful with their Application, I find that they are also entitled to the return of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,000.00.

Conclusion

The Landlord is granted a monetary order in the amount of \$2,000.00. The monetary order should be served to the Tenants as soon as possible and 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: June 17, 2021

Residential Tenancy Branch