



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE POOL CAMPSITE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL, CNR, RR, CNC, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Tenancy Act*. The landlord applied for:

- an order of possession for unpaid rent pursuant to section 54;
- a monetary order for unpaid rent pursuant to section 60;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 65.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- an order to the landlord to provide services or facilities required by law pursuant to section 58.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served both the tenants with the notice of hearing package and the submitted documentary evidence in person on October 27, 2021. The tenants confirmed that no documentary evidence was submitted in response to the landlord's application. Both parties also confirmed the tenants served the landlord with

their notice of hearing package and all of the submitted documentary evidence in person. Both parties also confirmed the tenants served the landlord with the 4 separate amendments to the application for dispute in person.

I accept the undisputed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package(s) and all of the submitted documentary evidence files and the tenants' filed amendments.

Extensive discussions took place to clarify the applications filed by both parties. The landlord seeks an order of possession and a monetary claim for unpaid rent of \$3,220.00 which was amended to include October 2021 rent making it \$3,700.00 for 5 months of unpaid rent based upon the 10 Day Notice dated October 2, 2021. The tenants seeks to dispute the 10 Day Notice(s) for Unpaid Rent served July 4, 2021, August 1, 2021, September 11, 2021 and October 2, 2021; and the 1 month notice served on August 22, 2021. Discussions took place in which the landlord confirmed that he was only proceeding on the 10 Day Notice dated October 2, 2021. On this basis, the landlord cancelled all the notice(s) to end tenancy save and except for the 10 Day Notice dated October 2, 2021. The tenants confirmed that they did not file an application to dispute the 10 Day Notice for Unpaid Rent dated October 2, 2021.

During the hearing the tenants clarified that their requests for a rent reduction and an order for the landlord to provide services or facilities. The tenants stated that they were having issues with the landlord's lack of action regarding maintenance of the rental unit. The tenants cancelled these portions of their application as they were unrelated to the primary issue of unpaid rent.

The hearing proceeded on the landlord's entire application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord provided undisputed affirmed evidence that the tenants failed to pay rent for:

June 2021	\$780.00
July 2021	\$780.00
August 2021	\$780.00
September 2021	\$780.00
October 2021	\$580.00

for a total of \$3,700.00 for the 6 month period.

The tenants confirmed they have not paid any rent as claimed by the landlord. The tenants argued that they have withheld rent in response to the landlord failing to address their issues.

The tenants confirmed in their direct testimony that they do not have an order from the Residential Tenancy Branch authorizing them to withhold rent nor do they have consent from the landlord to withhold rent.

Analysis

Pursuant to section 39 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlord served the tenants with the 10 Day Notice for Unpaid Rent in person on October 2, 2021.

The landlord has claimed that the tenants have failed to pay rent totalling \$3,700.00 as of the date of this hearing for the 5 month period between June 2021 and October 2021.

The tenants have confirmed that no rent has been paid as claimed by the landlord. The tenants stated that rent was withheld in dispute of the landlord's inaction on the tenants' issues.

Section 20 of the Act states in part that a tenant must pay 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.

The tenants confirmed that they do not have the consent from the landlord to withhold rent nor do they possess an order from the Residential Tenancy Branch authorizing them to withhold rent.

I accept the undisputed affirmed evidence of both parties and find that the landlord has established a claim for unpaid rent as per the 10 Day Notice dated October 2, 2021. On this basis, the 10 Day Notice is upheld and the landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

I also find based upon the undisputed evidence of both parties that the landlord has established a claim for unpaid rent totalling \$3,700.00 as of the date of this hearing.

The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$3,800.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia.

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: November 16, 2021

Residential Tenancy Branch