



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, OLC, RR, ERP, MNRT, MNDCT, FFT

Introduction

This hearing was convened in response to an application and amended application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy - Section 46;
2. An Order in relation to a disputed rent increase - Section 43;
3. An Order for the Landlord’s compliance - Section 62;
4. An Order for a rent reduction - Section 65;
5. An Order for emergency repairs - Section 33;
6. A Monetary Order for the cost of emergency repairs - Section 67;
7. A Monetary Order for compensation - Section 67; and
8. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants confirm that the Tenant named EF is a minor child. Given this evidence I do not add this name to any order granted.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the monetary claims for compensation

and emergency repairs are is not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of two notices to end tenancy for unpaid rent?

Are the Tenants entitled to orders in relation to a rent reduction, emergency repairs and the Landlord's compliance?

Are the Tenants entitled to recovery of their filing fee?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The following are agreed facts: the tenancy started on August 1, 2020. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. Rent of \$1,400.00 is payable on the first day of each month. The Landlord collected an extra \$200.00 per month as rent for the period April to September 2021 inclusive for a total amount of \$1,200.00. The Landlord collected this extra rent without being in compliance with the Act's provisions on rent increases. The notice to end tenancy for unpaid rent dated October 15, 2021 (the "First Notice") is not valid as the Tenants deducted some of the extra rents for this month. The notice to end tenancy for unpaid rent dated November 12, 2021 (the "November Notice") is valid for the unpaid rent of \$950.00. No rent was paid for December 2021.

The Parties attempted to reach a settlement however they were not successful during the hearing. The Landlord seeks an order of possession as soon as possible.

Analysis

Section 55(1) of the Act provides that 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.

Based on the agreed facts that the First Notice is not valid I cancel this notice. Based on the agreed facts that the November Notice is valid for unpaid rent I dismiss the Tenant's claim to cancel this notice. As the November Notice is valid, I find that the Landlord is entitled to an order of possession.

Section 55(1.1) of the Act provides that if an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent. Based on the agreed facts that no rent monies were owed as stated in the first Notice I find that the Landlord is not entitled to a monetary award for these monies. Based on the agreed facts that the Tenants failed to pay \$950.00 for November 2021 as set out on the November Notice I find that the Landlord is entitled to **\$950.00**.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. Based on the agreed facts that rent of \$1,400.00 was not paid for December 2021 and in order to deal with the Landlord's entitlement to this rent expeditiously I find that the Landlord is entitled to unpaid rent of **\$1,400.00** for a total monetary amount of **\$2,350.00**.

Although the Landlord seeks an order of possession as soon as possible and although it was indicated at the hearing that the Landlord could be entitled to an order of possession within 2 days service of the order on the Tenants, upon further

consideration that the Landlord has been found entitled to full rent for December 2021, I make the order of possession effective December 31, 2021.

As the tenancy is ended and as the claims in relation to a rent reduction, emergency repairs and the landlord's compliance are only relevant to an ongoing tenancy I dismiss these claims.

Although the Tenants' claim in relation to the November 2021 Notice has not been successful, given that the First Notice was issued by the Landlord as a result of the Landlord's breach of the Act in collecting a rent increase greater than allowed and as the First Notice was cancelled for this reason, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee. I deduct this amount plus the security deposit and interest of **\$700.00** from the Landlord's final entitlement leaving **\$1,550.00** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on December 31, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order the Landlord to retain the security deposit plus interest of \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,550.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 14, 2021

Residential Tenancy Branch