



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNR OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on October 25, 2021. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 21, 2021 (the 10 Day Notice); and
- an order that the Landlord make repairs to the unit, site, or property.

The Landlord and the Tenant KR attended the hearing at the appointed date and time. The Tenant AR did not attend the hearing.

The Tenant KR testified the Notice of Dispute Resolution Proceeding was served on the Landlord by email on November 1, 2021. Landlord acknowledged receipt on that date. The Tenant KR confirmed that no documentary evidence was served on the Landlord.

The Landlord testified that a responsive evidence package was served on each of the Tenants by email on March 1, 2022. The Tenant KR acknowledged receipt. The Landlord also testified the responsive evidence package was served on the Tenant AR in person on March 1, 2022. A photograph of the Landlord serving the Tenant AR was submitted in support.

No issues were raised with respect to service or receipt of these packages during the hearing. The Landlord and the Tenant KR were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties in attendance were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to an order that the Landlord complete repairs to the unit, site, or property?

Background and Evidence

The Landlord and the Tenant KR agreed the tenancy began on June 15, 2020. Rent in the amount of \$2,000.00 per month is due on the 15th day of each month. The Tenants paid a security deposit in the amount of \$1,000.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted in support.

The Landlord testified the 10 Day Notice was sent to the Tenants by posting a copy to the Tenants' door and via email on October 22, 2021. The Tenant KR acknowledged receipt on that date. The 10 Day Notice indicates that, at that time, rent of \$7,500.00 and utilities of \$232.00 remained unpaid.

The Landlord testified that rent was also not paid when due on November 15, 2021, December 15, 2021, January 15, 2022, and February 15, 2022, and that the Tenant AR continues to occupy the rental unit. Currently, rent of \$15,500.00 is outstanding.

In reply, the Tenant KR testified that he moved out of the rental unit on December 1, 2021. It appears this was due to marital issues between the Tenants. He did not dispute the amount claimed by the Landlord but stated it was not paid because the Landlord did not perform repairs to the heating system when requested.

In addition, the Landlord testified that the Tenants have been asked to pay the outstanding utilities and have been provided with invoices. However, the Landlord testified the Tenants have not paid any utilities since the 10 Day Notice was issued and that \$1,219.43 is currently outstanding to February 28, 2022. Copies of BC Hydro and Fortis BC invoices were submitted in support.

In reply, the Tenant KR stated he “assumed” the amount claimed was correct but testified the invoices were not received until last month.

At the end of the hearing, the parties were given an opportunity to provide any further evidence they believed was relevant to the Tenants’ application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the Act confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the Residential Tenancy Regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, based on the evidence of the Landlord and the Tenant KR, I find that the Tenants did not pay rent when due and that \$15,500.00 remains outstanding. I also find there is insufficient evidence before me to conclude the Tenants had a right under the Act to deduct all or a portion of the rent. Therefore, I find that the Tenants’ application is dismissed without leave to reapply.

Section 55(1) of the Act confirms that if a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession.

In this case, the Tenants’ application has been dismissed. I also find that the 10 Day Notice complies with the form and content requirements of section 52 of the Act. Therefore, I find that the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenants.

In addition, section 55(1.1) of the Act confirms that if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the form and content requirements of section 52 of the Act, the director must grant a monetary order for unpaid rent.

In this case, the evidence of the Landlord and the Tenant KR confirms that rent in the amount of \$15,500.00 remains unpaid. Therefore, I find that the Landlord is entitled to a monetary award in the amount of \$15,500.00 for unpaid rent to March 14, 2022.

With respect to unpaid utilities totalling \$1,219.43, section 46(6) of the Act permits unpaid utilities to be treated as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

In this case, I find there is insufficient evidence before me that the Landlord provided the Tenants with a written demand for payment of outstanding utilities. Therefore, I find that the unpaid utilities referred to by the Landlord cannot be treated as unpaid rent for the purpose of section 55(1.1) of the Act. However, I find it is appropriate in the circumstances to confirm that the Landlord remains at liberty to apply for a monetary order for unpaid utilities and other losses under the Act.

Considering the above, it is not necessary for me to consider the Tenants' request that the Landlord make repairs to the unit, site, or property.

Conclusion

The Tenants' application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession. The order of possession must be served on the Tenants. The order of possession may be filed in and enforced as an order of the supreme Court of British Columbia.

Pursuant to section 55(1.1) of the act, the Landlord is granted a monetary order in the amount of \$15,500.00. The monetary order must be served on the Tenants. 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: March 8, 2022

Residential Tenancy Branch