



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR MNDC FF
Tenant: CNR OLC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 25, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlord and both Tenants were at the hearing. Both parties confirmed receipt of each others application and evidence packages. No service issues were raised. I find both parties sufficiently served each other with their application, Notice of Dispute Resolution Proceeding, and evidence.

Both parties were provided the 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.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are

related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.

I note the Landlord also applied for general monetary compensation under a separate ground for the recovery of unpaid utilities. However, as this amount was not listed on the Notice, and is not related to whether or not the tenancy ends, this item will not be considered in this proceeding. The Landlord is granted leave to reapply for monetary compensation for unpaid utilities, should he wish to pursue those amounts. The Tenants are also granted leave to reapply for any issues not addressed in this proceeding.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$3,300.00 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$1,650.00. The Landlord stated that the Tenant failed to pay any rent for December of 2021, or January, February or March of 2022, and now owes \$13,200.00 in rent for these months.

The Tenant acknowledged receiving the Notice on December 4, 2021. A copy of the Notice was provided into evidence, and it lists that at the time the Notice was issued, \$3,300.00 was overdue as of December 1, 2021. The Tenants stated that they moved in sometime in November 2021, and they paid rent for this month. However, shortly after moving in, they noticed many issues with the rental unit, and the house (mold, bugs, poor construction, etc). The Tenants stated they had conversations with the Landlord about some of these issues, but after the Landlord did not address the issues to the Tenants' satisfaction, the Tenants withheld rent from December onwards. The Tenants do not dispute that they failed to pay rent, as the Landlord has laid out. However, the

Tenants feel the Landlord owed them rent back because of all the issues with the house.

The Tenants also provided statements regarding hostile interactions with the Landlord, and stated they had to call the police when the Landlord became aggressive with them in December. The Landlord asserts they also had to call the police because of the Tenant's behaviour.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I find the Notice was received by the Tenants on December 4, 2021, which is the day they acknowledged receiving it. Further, the undisputed testimony of both parties is that rent was not paid on December 1, 2021. I acknowledge that the Tenants withheld rent due to issues they found with the rental unit. However, the Tenants were not entitled to unilaterally decide to withhold rent.

There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

I find no evidence that the Tenants had any legal basis to withhold rent. The Tenants could have applied for dispute resolution, if they felt there were issues needing addressing, prior to withholding their rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the

10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay rent for the months of December 2021 – March 2022 (\$3,300.00 x 4).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$13,200.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$1,650.00)
TOTAL:	\$11,650.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$11,650.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 25, 2022

Residential Tenancy Branch