



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR, LRE, DRI, MNR-DR, OPR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an

opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is a determination about a rent increase required?

Should the landlords right to enter the unit be suspended or have conditions?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

RD gave the following testimony. The tenant moved into the property approximately ten years ago. RD's father purchased and took possession of the property on June 1, 2021. The monthly rent of \$1800.00 is due on the first of the month. The tenant paid a security deposit of \$700.00 which the landlord still holds. RD testified that the tenant failed to pay the rent for the month of May 2022 and on June 1, 2022 the tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

RD testified that the tenant has not paid any rent since May 1, 2022 and the amount outstanding as of this date is \$10,800.00. RD requests an order of possession, a monetary order for the unpaid along with the recovery of the \$100.00 filing fee.

DM testified that the rent used to be \$1400.00 until the new owner took over and raised it to \$1800.00 DM testified that he paid the rent in full and on time until May 2022. DM testified that he stopped paying the rent because the landlords have been aggressive, threatening, and abusive. DM testified that the landlords actions resulted in him losing his child tax credit along with other subsidies that he relied on.

Analysis

The tenant failed to pay their rent in full within five days after he received the 10 Day Notice. The tenant has filed an application pursuant to dispute the 10 Day Notice, however, the tenant confirmed that he did not pay the rent. The tenant made several allegations about the landlord and the reasons for not paying the rent, however, the tenant did not provide sufficient evidence to corroborate those allegations. Section 26 of the Act addresses the issue before me as follows:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Based on the above, I find that the landlord has provided sufficient evidence to support the issuance of the notice. In addition, the tenant has confirmed non payment.

In this case, this required the tenants to vacate the premises by June 11, 2022. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the Act, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord unpaid rent. Although the tenancy agreement states the monthly rent payable is \$2500.00 per month, both parties confirmed that the monthly rent of \$1800.00 is due on the first of the month. The landlord is entitled to \$10,800.00 in unpaid rent along with the recovery of the filing fee of \$100.00 for an award of \$10,900.00. Although the landlord has not applied to retain the security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit

against the amount of unpaid rent. The landlord is entitled to a monetary order of \$10,200.00.

The tenants application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord has established a claim for \$10,900.00. I order that the landlord retain the \$700.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$10,200.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: October 24, 2022

Residential Tenancy Branch