



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL
CNR, RR, RP, PSF, OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants.

The landlord has applied for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord make repairs to the rental unit or property; an order that the landlord provide services or facilities required by the tenancy agreement or the law; and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

An agent for the landlord and one of the tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other.

The parties have exchanged evidence, however the landlord's agent submitted that a copy of the tenancy agreement was not provided to the tenants in the evidence package. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before me. Since the landlord has not provided a copy of the tenancy agreement to the tenants in the evidence package I decline to consider it.

I alerted the parties to the Rules of Procedure which indicate that multiple applications contained in a single application must be related, and I found that the primary applications deal with the notice to end the tenancy.

All evidence that has been exchanged has been reviewed and the evidence I find relevant to the notice to end the tenancy is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2023 and reverts to a month-to-month tenancy after November 1, 2024, and the tenants still reside in the rental unit. Rent in the amount of \$3,800.00 is payable on the 1st day of each month. In October, 2023 the landlord collected a security deposit from the tenants in the amount of \$1,900.00 as well as a pet damage deposit in the amount of \$1,900.00, both of which are still held in trust by the landlord. The rental unit is a single detached house.

The landlord's agent further testified that the tenants failed to pay rent for the month of January, 2024 and the landlord served a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by personally handing it to one of the tenants. A copy of the Notice has been provided for this hearing. It is dated January 9, 2024 and contains an effective date of vacancy of January 19, 2024 for unpaid rent in the amount of \$3,800.00 that was due on January 1, 2024. No rent has been paid since the Notice was served, and the landlord claims \$7,600.00 for January and February, 2024 rent.

The tenant testified that the tenant is a registered house builder and didn't realize what dangers are in the rental home. The tenants had no heat throughout January, and there are plumbing and electrical deficiencies as well of rats and a ton of things not working. The tenant told the landlord that rent wouldn't be paid until the deficiencies were remedied, but the landlord decided to give the Notice instead of making repairs.

Analysis

The *Residential Tenancy Act* states that a tenant must pay the rent even if the landlord fails to comply with the *Act* or the tenancy agreement.

I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*.

The tenant did not dispute that rent has not been paid, but testified that is due to the fact that the landlord has not provided a rental unit in a state of decoration and repair that complies with construction standards. Where a landlord fails to make emergency repairs for health or safety reasons, the tenant is permitted to make the repairs and reduce rent accordingly, however there are rules about that, and the tenants have not applied for monetary compensation for the cost of emergency repairs.

Where a tenant is served with a Notice for unpaid rent, the law states that if the tenant pays the rent within 5 days of service or deemed service, the Notice is of no effect. In this case, the tenants have not paid any of the rent after the Notice was served.

As a result, I find that the landlord is entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenants. The tenants must be served with the order of possession, which may be filed for enforcement in the Supreme Court of British Columbia.

I also find that the landlord has established a monetary claim of \$7,600.00 for unpaid rent.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

I grant a monetary order in favour of the landlord as against the tenants in the amount of \$7,700.00. The tenants must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since the tenancy is ending, I dismiss the tenants' application in its entirety without leave to reapply.

The landlord has not applied for an order permitting the landlord to keep any portion of the security deposit or pet damage deposit, and I order that the parties deal with the deposits in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,700.00.

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

I order the parties to deal with the security deposit and pet damage deposit in accordance with Section 38 of the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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: February 22, 2024

Residential Tenancy Branch