



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the Landlord: OPRM-DR, FFL
 For the Tenant: CNR, MNDCT, OLC, FFT

Introduction

This decision pertains to applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The landlord’s application for dispute resolution (the “landlord’s application”) was made on October 12, 2018. The landlord applied for the following relief under the Act:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent and other charges; and,
3. a monetary order for recovery of the filing fee.

The tenant’s application for dispute resolution (the “tenant’s application”) was made on October 7, 2018. The tenant applied for the following relief under the Act:

1. an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”);
2. an order for the landlord to comply with the Act;
3. compensation; and,
4. a monetary order for recovery of the filing fee.

The landlord’s agent and the tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue.

I explained to the parties that I am dismissing the tenant's claims 2 and 3, above, with leave to reapply. As such, this decision will only address claims 1 and 4, above. The tenant acknowledged that he understood.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. If not, is the tenant entitled to an order cancelling the Notice?
3. Is the landlord entitled to a monetary order for unpaid rent and other charges?
4. Is the landlord entitled to a monetary order for recovery of the filing fee?
5. Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on June 1, 2018, and was a fixed term tenancy ending on May 31, 2018, at which point the tenancy became month-to-month. Monthly rent was initially \$1,250.00, which increased to \$1,300.00 in July 2018. Rent is due on the first of the month. The tenant paid a security deposit of \$625.00. No pet damage deposit was required as pets are not allowed. Submitted into evidence was a copy of the tenancy agreement, a copy of the Notice, and Monetary Order Worksheet.

The landlord further testified that the tenant did not, and has not, paid rent for October 2018, and that the tenant owes unpaid rent in the amount of \$1,300.00, \$25.00 in NSF charges, and \$25.00 in late rent fees. The landlord is also claiming \$100.00 for the filing fee in order to make its application.

Regarding the Notice, the landlord testified that they served the Notice on October 3,

2018, by posting it on the tenant's door, with an effective end of tenancy date of October 10, 2018. Service was witnessed by the landlord's "housekeeping lady," "A.M."

The tenant testified that he had paid rent late a few times before and was trying to catch up with the late payments. He obtained a bank draft (which included the late fees) and gave it to the landlord on August 10, 2018. On August 13, the landlord's representative (or someone) slipped the bank draft back under the tenant's door. He tried contacting the landlord's representative about the late fees, along with other issues that are not central to this application, but he did not hear back.

As October approached, and not hearing back from the landlord, the tenant "didn't know what to do" and decided not to pay rent for October. He noted that he was in a bind and that the landlord was breaking residential tenancy rules.

The landlord testified that, and the tenant confirmed, that rent is ordinarily paid by direct deposit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent in the amount of \$1,300.00 for the month of October 2018, and that there is \$25.00 in NSF charges and \$25.00 in late fees currently owed. The tenant did not dispute that he did not pay rent for October. And, while there were issues between the landlord and the tenant unrelated to the revised claim in the tenant's application, these reasons did not meet any section of the Act permitting the tenant to withhold rent. Not paying rent because of the failure of the landlord to respond to the tenant's complaints are insufficient reasons to withhold rent.

Taking into consideration the oral testimony and documentary evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim that the tenant owes a total of \$1,350.00 in rent and other fees.

As the landlord is successful in his claim, I grant the landlord a monetary award in the amount of \$100.00 for recovery of the filing fee.

I hereby order that the landlord retain the security deposit in the amount of \$625.00 in partial satisfaction of the award.

A total monetary order of \$825.00 for the Landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$1,300.00
NSF and late fees	50.00
Filing fee	100.00
<i>LESS</i> security deposit	(\$625.00)
<u>Total:</u>	<u>\$825.00</u>

Turning now to the landlord's application for an order of possession, section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find that the Notice issued by the landlord on October 3, 2018, complies with the requirements set out in section 52. As such, I grant the landlord an order of possession pursuant to section 55 of the Act.

Given the above, I dismiss the tenant's application without leave to reapply.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant no later than November 28, 2018, and which is effective at 1:00 p.m. on November 30, 2018. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I hereby grant the landlord a monetary order in the amount of \$825.00, which must be served on the tenant. The 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 Act.

Dated: November 19, 2018

Residential Tenancy Branch