



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FFT, LAT, LRE, OLC, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On October 6, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an emergency repair order pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking to suspend or restrict the Landlord’s right to enter the rental unit pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On October 12, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. Both parties provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package and his evidence by posting it on her door on October 22, 2018 and the Landlord confirmed receipt of this package. While service of this package did not comply with Section 89 of the *Act*, as the Landlord acknowledged receipt of the package, I am satisfied that the Landlord received this package and that the hearing could continue.

The Landlord advised that she served the Tenant with the Notice of Hearing package by registered mail on October 19, 2018 and the Tenant confirmed that he received

notification of this package, but he refused to claim it as he was going on vacation. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed.

She also submitted that her evidence was served to the Tenant by registered mail on October 26, 2018 and the Tenant advised that he did not receive this as he was on vacation. As well, he stated that he did not have anyone check his mail for him. As service of the evidence complied with Rule 3.15 of the Rules of Procedure and Section 88 of the *Act*, I am satisfied that the Tenant was deemed to have received this evidence. As such, I have accepted and considered this evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for the unpaid rent?

- Are the Landlords entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on April 1, 2017 and that rent was established at \$925.00 per month. The Landlord submitted into evidence a tenancy agreement indicating that rent was due on the first of each month. However, the Tenant stated that the Landlord verbally changed the rent to be due on the fifth of each month and he referenced a letter that the Landlord authored which demonstrates that the Landlords confirmed that he paid rent on the fifth each month and that it was on time. Otherwise, he advised that he did not have any consent in writing from the Landlords authorizing rent to be paid on the fifth of each month. A security deposit of \$450.00 was paid.

Both parties agreed that the Tenant did not pay October 2018 rent, nor has he paid November 2018 rent. The Landlord stated that she served the Notice to the Tenant by posting it to the door on October 3, 2018 which indicated that \$925.00 was outstanding on October 1, 2018. The Tenant confirmed that he received the Notice on October 5, 2018. The Notice indicated that the effective end date of the Notice was October 19, 2018.

The Tenant stated that he did not pay the rent as plumbers had come into his unit in late September 2018 due to a flood in another unit, and they inadvertently flooded his rental unit. He then advised that dehumidifiers and fans were brought into the rental unit and were running every day for approximately a month. He stated that he attempted to work this situation out amicably with the Landlords, but they did nothing to improve the situation, so he gradually moved his belongings out of the rental as it was unlivable.

The Landlord advised that there was a flood in a unit above and it caused damage to the rental unit, but it was so minimal that it did not require her to go through her insurance company. However, a remediation company was brought in to rectify this situation. She stated that three holes were cut into the drywall and that a fan and dehumidifier were brought into the rental unit for approximately 48 hours. She submitted that an offer was made to the Tenant to put him in a hotel for the few days; however, the Tenant declined this offer.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Section 33 of the *Act* states that the Tenant may be permitted to withhold rent if there is an emergency repair as defined in this Section, if the Landlord does not complete the repairs in a reasonable amount of time after being informed of the repairs by the Tenant, and if the Tenant pays to have those repairs completed.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on October 5, 2018. While it is the Tenant's belief that the day rent was due changed, there is no evidence before me corroborating that the due date for rent was authorized to be changed by the Landlord. As such, I am satisfied that rent is still due on the first of each month.

According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*"

As the fifth day fell on October 10, 2018, the Tenant must have paid the rent in full or made this Application by this day at the latest. The undisputed evidence is that the Tenant made his Application on October 6, 2018 and he confirmed that he did not pay the rent to cancel the Notice as it was his belief that he was entitled to withhold the rent due to the circumstances of the flood.

However, based on the testimony before me, there is no evidence that the plumbing repair meets the criteria of an emergency repair nor is there any evidence that the Tenant paid to have this situation rectified. Furthermore, there is no compelling evidence that the rental unit was uninhabitable as the Tenant claims. As such, I do not find that the Tenant has substantiated a claim that this was a situation that permitted him to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being served the Notice. Moreover, the Tenant did not establish that he had a valid reason for withholding the rent pursuant to the *Act*. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$1,850.00**, which is comprised of rent owed for the months of October and November 2018.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
October 2018 – Outstanding rent	\$925.00
November 2018 – Outstanding rent	\$925.00
Filing fee	\$100.00
Total Monetary Award	\$1,950.00

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlords **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$1,950.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 20, 2018

Residential Tenancy Branch