



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, MNDCL, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on August 9, 2023 and an Application filed by the Landlord on August 15, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on August 3, 2023
- For a Monetary Order for unpaid rent
- Compensation for monetary loss or other money owed
- To recover the Application filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord representative W.A. acknowledged service of the Proceeding Package and was duly served in accordance with the Act.
- I find that Tenants acknowledged service of the Proceeding Package and were duly served in accordance with the Act

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord representative W.A. in accordance with section 88 of the Act.

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?
4. Is the Landlord entitled to compensation for monetary loss or other money owed?
5. Is the Landlord entitled to recover the filing fee?

Preliminary Matter: Is V.J.W. a co-signer or a guarantor?

As noted in Policy Guideline 27, I have jurisdiction to resolve disputes between co-signers and landlords because co-signers are parties to the tenancy agreement. A co-signer is a person who signs the tenancy agreement along with the Tenant to guarantee the Tenant meets their obligations under the tenancy agreement.

A guarantor is a person who signs a separate agreement with the landlord. I have no jurisdiction to resolve a dispute between landlords and guarantors because they are not parties to the tenancy agreement.

Respondent V.J.W. claims they are a guarantor for A.H. and should not be included in this dispute application. They were acting as guarantor until the tenancy agreement converted to month-to-month after one year.

V.J.W. signed the tenancy agreement with A.H. on November 8, 2020. Although V.J.W. testified about what she understood about what she agreed to, V.J.W. did not present any written guarantor agreement with the landlord.

A plain reading of the tenancy agreement is that V.J.W. is a co-signer and agreed to the terms of the tenancy agreement without any end date. V.J.W. agreed to the terms of the tenancy agreement on page two in the space for the Tenant signatures. On the tenancy agreement, V.J.W. wrote "guarantor" under their name at the top of page 1 in the space reserved for the name of Tenants but in the absence of a separate guarantor agreement with the landlord, I don't find this notation nullifies the status of V.J.W. as a co-signer to the tenancy agreement.

I find that V.J.W. is a co-signatory to the rental agreement and is properly named as a respondent in this dispute.

Background and Evidence

I have reviewed all evidence, including the testimony of the Tenant, Co-signer and the Landlord representatives but will refer only to what I find relevant for my decision.

Both parties testified that a one-year fixed tenancy agreement began on November 8, 2020. The agreed rent was \$1,300.00 per month due on the first day of each month. A security deposit of \$250.00 and pet damage deposit of \$200.00 was paid by the Tenant to the Landlord at the start of the tenancy and are currently held by the Landlord in trust. A copy of a tenancy agreement was submitted by the Landlord into evidence confirming these details.

The Landlord provided copies of two Notice of Rent Increase forms indicating that the initial monthly rental rate had increased from \$1,300.00 to the present rental rate of \$1,345.89.

The Tenant and the Landlord both provided a copy of the 10 Day Notice to End Tenancy posted on the Tenant's door on August 3, 2023 for \$1,345.89 in unpaid rent.

Both the Tenant and the Landlord representatives agreed that no rent was paid for August 2023.

A copy of a Direct Request Worksheet was provided by the Landlord for August 2023 indicating the amount of rent due and paid during this month indicating a balance owing of \$1,345.89 in unpaid rent.

The Tenant testified that he always pays his rent in full and on-time but had lacked the income for August rent due to a reduction in his income that occurred in December 2022.

Landlord representative K.S. advised that the rent for September 2023 remains outstanding and that the Landlord would like to include the additional rent owing for September to be included in a monetary award should the Landlord be successful in their application.

The Tenant confirmed that he has not paid rent for September 2023 as well.

Landlord representative K.S. testified that the Tenant owes the Landlord:

- \$36.00 for August and September 2023 rental insurance,
- \$67.39 in July to September late rental payment fees,
- \$50.00 to replace a smoke detector and,
- \$50.00 fee for a staff time to clean the old replaced fridge.

For a combined total of \$203.39.

The Landlord provided copies of:

- a group insurance policy agreement,
- a rental ledger,
- a work order for 0.48 hours to replace the rental unit smoke detector,
- a letter to the Tenant advising him of a \$50.00 charge for its replacement,
- a copy of a smoke detector release document signed by the Tenant and the Tenant Co-signer indicating that disconnection was not allowed and the associated fees to be charged if they were,
- a work order for 2.68 hours to replace the rental unit fridge.

The Tenant testified that he did not break the smoke detector but simply unplugged it because it would not stop going off and the Landlord was not responding to his request to fix the problem.

He stated that the Landlord did not provide him with ample time to complete the fridge cleaning as they wanted it out immediately so the new fridge and stove could be installed.

Analysis

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

As the Landlord representatives served the Notice by posting it on the Tenant's door on August 3, 2023, the Tenant is deemed to have received it on August 6, 2023, 3 days later as per section 90 of the *Act*. As such, the Tenant's application for dispute

resolution on August 9, 2023 is in compliance with the 5 day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Relying on the Direct Request Work sheets and testimony of the Tenant and Landlord representative K.S., I find that the Tenant did not pay the rent due on August 1, 2023 and that the Landlord therefore had a valid reason for issuing the notice.

The Tenant testified that he did not pay his rent or provide evidence that he was authorized under section 26 of the *Act* to withhold it. His application for the cancellation of the Notice is therefore dismissed without leave to reapply.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 55 of the *Act* states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - a) the landlord's notice to end tenancy complies with section 52, and
 - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the *Act*.

The Tenant's application to dispute the Notice has been dismissed.

The Landlord's application for an Order of Possession is hereby granted under section 55 of the *Act*.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the evidence submitted and testimony of the Tenant and Landlord representative K.S., I find that the Landlord has substantiated their claim for unpaid rent for August and September 2023.

I hereby grant the Landlord a monetary award in the amount of \$2,691.78 for unpaid rent for August and September 2023 under section 55(4)(b) of the Act. The Landlord may keep the Tenant's security deposit of \$456.64, including interest, per section 38(4)(b) in partial satisfaction of the outstanding rent.

Is the Landlord entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states in part "...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."

The Landlord has the onus to prove the Tenant breached the act or tenancy agreement and this resulted in a financial loss that they can prove. The Landlord also has to prove they attempted to minimize their losses by taking action on the breach as soon as possible.

Residential Tenancy Policy Guideline 16 states that, in order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

The tenancy agreement in evidence indicates that fees will be charged for late rental payments and for monthly group insurance. By failing to pay the monthly rent and the associated rent insurance premiums, the Tenant was in breach of the tenancy agreement resulting in a financial loss for the Landlord in unpaid rent and premium costs. The Landlord notified the Tenant on numerous occasions that rent was past due including a notice to end tenancy.

The Smoke Detector Release document signed by the Tenant and Co-signer acknowledges their understanding that the Tenant is not to remove or disconnect the

smoke detector and the fees to be charged if they do. By disconnecting it, the Tenant was in breach of this provision of this addendum to his tenancy and is therefore liable for the costs prescribed in the signed document. The Landlord replaced the disconnected or damaged smoke detector as soon as they became aware of the situation and followed up the repair with a letter to the Tenant requesting compensation.

The Landlord's cost for cleaning an old fridge that was replaced in the rental unit does not constitute damages. Fees for staff time to comply with the Act to maintain the rental unit in a suitable state of decoration and repair for occupation by the Tenant are not part of the terms of the tenancy agreement.

While I find that the Tenant did breach his tenancy agreement by failing to pay his rent, insurance premiums and by removing the smoke detector and that the Landlord did suffer a financial loss as a result, as the ledger provides a running total of Tenant payments and fees charged, I am unable to determine which fees were paid in full or remain outstanding based on the information provided.

For this reason, the Landlord's claim for compensation for other monies owed is dismissed without leave to reapply.

Is the Landlord entitled to recover the \$100.00 filing fee?

As the Landlord was successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Landlord to retain the Tenant's security deposit of \$456.64. I grant the Landlords a Monetary Order in the amount of **\$2,335.14** for the recovery of the remaining rent for August and September 2023 and for the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenant and Co-signer must be served with **this Order** as soon as possible. Should the Tenant and Co-signer 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: October 5, 2023

Residential Tenancy Branch