



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, DRI, FFT, LAT, MNDCT, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to dispute a rent increase, cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), cancellation of a One Month Notice to End tenancy for Cause (the “One Month Notice”), an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, authorization to change the locks, a monetary order for loss or other money owed, and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlords, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in these matters in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

**Preliminary Matter #1**

In their Application the Tenants sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a 10 Day Notice, to dispute a related rent increase, and to cancel a One Month Notice, I find that the priority claims relate to whether the tenancy will continue and the payment of rent. I find that the other claims by the Tenants are not sufficiently related to rent or the continuation of the tenancy and I therefore exercise my discretion to dismiss the Tenants claims for an order for the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement, authorization to change the locks of the rental unit, and compensation for money owed with leave to reapply.

Based on the above, the hearing proceeded only on the issues of the rent increase, the 10 Day Notice and the One Month Notice.

**Preliminary Matter #2**

Although the Landlord L.F. testified that she never received anything from the Tenants in relation to this hearing, the Tenants testified that several packages for each Landlord were sent by registered mail and posted to the door of the address for service of the Landlord listed on the Notices to End Tenancy and the tenancy agreement. L.F. stated that the tenants are aware that she resides in a different province and that they could have asked for her address but never did.

Although the Landlord B.B. stated that the Tenants sent documents by express post instead of registered mail and that several packages were left on the doorstep, not posted to the door, she confirmed receipt of the packages left by the Tenants and sent by mail.

The parties were all in agreement that the address for service of the Landlord listed on the Notices to End Tenancy is the same address for service listed for the Landlord in the tenancy agreements. As a result, I find that the Landlord L.F. was deemed served

with the Tenants' evidence in accordance with the *Act*, despite the fact that she states she did not receive it, as it was sent to the address for service of the Landlord.

As the Tenants confirmed receipt of the Landlords evidence, I therefore accepted the evidence before me from both parties for consideration in the hearing.

#### Issue(s) to be Decided

Are the Tenants entitled to cancellation of the 10 Day Notice or the One Month Notice?

If the Tenants are unsuccessful in cancelling either the 10 Day Notice or the One Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Tenants entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The parties agreed that the tenancy initially began on April 5, 2014, at a monthly rental rate of \$950.00, including a \$50.00 per month payment for utilities. A copy of the original tenancy agreement matching the above testimony was before me for review. The parties also agreed that a new tenancy agreement was reached between them in March of 2018, a copy of which was also before me for review.

The new tenancy agreement in the documentary evidence before me, signed only by the Tenants on March 18, 2018, states that the tenancy began March 15, 2018, and that rent in the amount of \$950.00 is due on or before the 15<sup>th</sup> day of each month and includes sewer fees, the appliances in the rental unit, and parking for one vehicle. Under section 3, additional information, it states that utilities are the responsibility of the Tenants. Attached to the tenancy agreement is a hand-written addendum signed by the Tenants and the Landlord B.B., with two sections relating to maintenance and repair of the rental unit. Further to this there is writing which appears to have been added after-the fact stating that rent was originally \$900.00 plus \$50.00 in utilities.

The Tenants stated that the tenancy agreement is not enforceable as the Landlord's forced them to sign it. When asked to provide details regarding this allegation, the Tenant E.B. stated the Landlords threatened them. When asked to provide details about these threats, neither of the Tenants provided further detail. In any event, the Tenants

stated that the tenancy agreement is also an illegal rent increase as their original rent was \$900.00, plus \$50.00 for utilities, and therefore the Landlord was only allowed to increase their \$900.00 rent by 4%, plus the \$50.00 charge for utilities.

The Tenants acknowledged that they did not pay rent on April 15, 2018, May 15, 2018, or June 15, 2018, due to the dispute regarding the amount of rent owed per month. Although the Tenant K.G. stated that rent was also withheld for emergency repairs, when asked he could not provide details about these repairs or their full costs. There was also no documentary evidence before me for consideration regarding any emergency repairs completed. In any event, the Tenants acknowledged that the amount of any emergency repairs completed would not total the amount of rent currently unpaid.

The Landlords agreed that the unsigned tenancy agreement is an accurate reflection of the current terms of the tenancy in that rent is \$950.00 per month, due on the 15<sup>th</sup> day of each month, and that the Tenants are to pay all utilities themselves except for sewer, which is included in the cost of rent.

The Landlords denied that they forced or coerced the Tenants into signing a new tenancy agreement. In contrast the Landlords stated that it was actually the Tenants who sought a new tenancy agreement and that they in fact dropped off the tenancy agreement for the Tenants to review, sign, and return to them. The Landlords stated that as they were not even there when the Tenants signed it, and as a result, it is irrational to state that they were forced into it.

The Landlords stated that the Tenants were responsible to pay \$950.00 in rent on April 15, 2018, and that when the Tenants failed to do so, a 10 Day Notice was served on them, which the Tenants acknowledged receiving.

The 10 Day Notice in the documentary evidence before me, dated April 14, 2018, states that as of April 15, 2018, the Tenants owed \$950.00 in outstanding rent. The Landlords stated that as the Tenants have not made any rent payments since March 16, 2018, they currently owe three months in outstanding rent for April, May, and June of 2018. As a result, they requested a two day Order of Possession pursuant to section 55 of the *Act*.

### Analysis

I do not accept the Tenants' allegation that they were forced by the Landlords to enter into and sign a new tenancy agreement. This is a serious allegation which the Landlords

dispute and as the Tenants were unable to provide details of these alleged threats or documentary evidence in support of this testimony, I give it no weight. As a result, I find that the Tenants signed the tenancy agreement by their own free will and that they are thereby bound by any terms and conditions which are not unlawful or unconscionable under the *Act* or the regulations.

I also do not accept the Tenants' argument that the new tenancy agreement constitutes an unlawful rent increase. The *Act* and the regulations prescribe how and when, during a tenancy, a landlord may increase the rent. However, in this circumstance the Landlords did not seek to increase the rent under the *Act* and the regulations; instead, both parties entered into a new tenancy agreement with new terms and conditions. As a result, I find that the sections of the *Act* and the regulation pertaining to rent increases do not apply and the parties are therefore bound by the terms and conditions of the new tenancy agreement which states that rent in the amount of \$950.00 is due on the 15<sup>th</sup> day of each month and that the Tenants are personally responsible for all utilities except sewer.

In any event, the Tenants acknowledged that no rent has been paid to the Landlords since March 16, 2018. While the Tenants testified that they withheld the rent due to the dispute about the amount of rent payable, section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Although the Tenant K.G. testified that emergency repairs were completed, no documentary evidence was before me with regards to emergency repairs. As a result, I have given this testimony little weight. In any event, both Tenants acknowledged that the cost of any emergency repairs completed would not total the amount of rent withheld to date. As the Tenants did not provide any documentary or other evidence to satisfy me that they had cause under the *Act* to deduct all or a portion of the rent due on April 15, 2018, May 15, 2018, or June 15, 2018, I find that they were obligated to pay the \$950.00 in rent, on time and in full on those dates.

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

**Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In the hearing the Tenants acknowledged receipt of the 10 Day Notice on or about April 15, 2018. They also acknowledged that no rent has been paid to the landlords since March 16, 2018. Based on this testimony and my previous findings, I therefore dismiss the Tenants' Application seeking cancellation of the 10 Day Notice without leave to reapply. Having made this finding, I will now turn my mind to the issue of whether the 10 Day Notice complies with section 52 of the *Act*. As the 10 Day Notice is signed and dated, contains the address for the rental unit and the reason for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlords are therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice, April 25, 2018, has passed and rent has not been paid in several months, the order of possession will be effective two days after service on the Tenants.

Although the Tenants also applied to cancel a One Month Notice, as I have already found above that the Tenancy is ended as a result of the 10 Day Notice, I have not made any findings of fact or law in relation to the One Month Notice. As a result, I dismiss this claim with leave to reapply. This is not an extension of any statutory deadline.

As the Tenants were unsuccessful in their Application, I decline to grant them recovery of the filing fee.

### Conclusion

The Tenants' Application disputing a rent increase and seeking cancellation of a 10 Day Notice is dismissed without leave to reapply. The Tenants remaining claims are dismissed with leave to reapply; however, this is not an extension of any statutory timeline.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **Two Days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: June 19, 2018

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Residential Tenancy Branch