



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1112862 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, FFL, CNR, MNRT, MNDCT, OLC, RP, RR, FFT

Introduction

This hearing dealt with applications from both the corporate landlord identified above and the tenants identifying themselves as Tenants TH and KR under the *Residential Tenancy Act* (the *Act*). The corporate landlord identified Tenants TR and KR in their application using the Residential Tenancy Branch's (RTB's) direct request process for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants, identifying themselves as TH and KR named Landlord RL as the Respondent in their application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to

cross-examine one another. The tenants were represented by Tenant KR's brother (the agent), who was visiting the tenants, but whose primary purpose in calling into this teleconference hearing was to request an adjournments. The agent gave sworn testimony that KR's name is as spelled above, which I have amended accordingly.

The landlord testified that they posted the 10 Day Notice on the tenants' door on October 10, 2018. The tenants noted in their application that they received the 10 Day Notice posted on their door on that date, and applied to cancel the landlord's 10 Day Notice on October 16, 2018, within five days of having been deemed to have received that notice on October 13, 2018. On the basis of this evidence, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The landlord gave undisputed sworn testimony supported by written evidence in the form of Canada Post Tracking Numbers and Customer Receipt that they sent both tenants copies of their dispute resolution hearing package and written evidence package on November 9, 2018. As the agent realized that there were applications from both the tenants and the landlord to be considered at this hearing, I find that the tenants were deemed served with these packages in accordance with sections 88, 89 and 90 of the *Act*. As the landlord confirmed receipt of the tenants' dispute resolution hearing package, I find that the landlord was duly served with the tenants' hearing package in accordance with section 89 of the *Act*.

The landlord's 10 Day Notice issued on October 10, 2018 identified \$5,857.00 in rent and \$566.29 in utilities owed by the tenants as of October 2, 2018, totaling \$6,423.29. The landlord applied for a monetary award of \$6,423.29. At the hearing, the landlord requested an additional \$1,720.00 in rent owing for November 2018 and \$22.47 in unpaid utilities that have become owing since the landlord filed their application for dispute resolution on October 19, 2018. The landlord said that the unpaid rent and utilities now totals \$8,407.00, but was satisfied to request an increase to \$8,188.00 the amount identified on the most recent tenant rent ledger the landlord entered into written evidence. The landlord's requested monetary award is hereby increased to \$8,188.00 plus recovery of the filing fee from the original claim of \$6,423.29. I allowed this oral request as the tenants clearly would have known that this additional rent and utilities would have come due by the time this hearing occurred.

Preliminary Issue - Monetary Portion of Tenants' Application

RTB Rules of Procedure 2.3 and 6.2 establish that arbitrators may refuse to consider unrelated issues to the central matter of the hearing. Rule of Procedure 6.2 provides the following example, which I find has a bearing on the tenants' application for dispute resolution.

...For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply...

In this case, I find the tenant's application was initiated on October 16, 2018, in direct response to the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 10, 2018. Although the tenants identified a \$7,218.50 monetary claim along with their application to cancel the 10 Day Notice and requested repairs, they provided no written evidence to support the monetary portion of their application. Their application claimed monetary losses arising out of this tenancy of \$5,351.25, emergency repairs of \$567.25 and requested a rent reduction totaling \$1,300.00. The tenants supplied no further breakdown of these amounts and did not submit any written evidence to support their monetary claim or their request for repairs.

Under these circumstances, I find that the monetary portion of the tenants' application was not sufficiently related to their application to cancel the 10 Day Notice. It simply identified an amount in excess of what the landlord identified as owing in the 10 Day Notice. For this reason and in accordance with RTB Rules of Procedure 2.3 and 6.2, I dismiss the tenants' monetary claim with leave to reapply.

Preliminary Issue- Request for an Adjournment by Tenants' Agent

The agent testified that both tenants are currently in the hospital. The agent said that Tenant KR is in a hospital, convalescing from a shoulder injury. The agent said that Tenant TH (aka TR) is also in the hospital recovering from a heart attack. The agent did not know the names of either of these hospitals, nor did he outline why the tenants could not have called into the hearing, even if hospitalized. The agent said that they attempted to submit new written evidence on the business day before this hearing and have been sending the landlord text messages asking for a rescheduling of the hearing until such time as the tenants are released from the hospital. On this basis, I understood that the agent was seeking an adjournment of this hearing to enable the tenants to attend and to submit their written evidence.

Preliminary Issue - Analysis - Request for an Adjournment by Tenants' Agent

Rule 7.8 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled.

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

In considering this request for an adjournment, I have applied the criteria established in Rule 7.9 of the Rules of Procedure, which provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

As noted in RTB Rule of Procedure 7.11, "when a request for adjournment is refused, reasons for refusing the request will be provided in the written decision."

At the hearing, the landlord strongly objected to this request for an adjournment, noting that the tenants have not paid their full rent or utilities for six months. The landlord testified that to delay this process further would cause additional hardship to the landlord, as the landlord needs tenants to be paying rent in exchange for their occupancy of his rental property.

After considering the agent's request for an adjournment and the landlord's position regarding that request, I declined to adjourn the matters regarding the landlord's application for an order of possession based on the 10 Day Notice and the monetary amount requested in the landlord's application. Neither the agent nor the tenants have

submitted anything in writing to substantiate the agent's claim that they are both currently hospitalized and unable to participate in this teleconference hearing. The agent did not know the name of the hospital where they are staying. Although the tenants have supplied no written evidence to support their claim for a monetary award or to oppose the landlord's application, the agent said that he understood that the tenants had important written evidence that they wished to have considered for a hearing of their application. I noted that Applicants for dispute resolution are expected to submit copies of any written evidence upon which they intend to rely at least 14 days before the hearing to both the other party and the RTB. The tenants did not provide any written evidence within the time frames established in the RTB's Rules of Procedure. Their neglect in doing so and complete lack of supporting documents to substantiate their application led me conclude that granting their requested adjournment would only further delay the landlord's ability to obtain vacant possession of a rental unit where no rent has been paid since July 2018, and, in this way, further prejudice the landlord. The request for an adjournment was dismissed and I proceeded to hear evidence regarding the landlord's application and the non-monetary aspects of the tenants' application.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent and/or unpaid utilities? Is the landlord entitled to a monetary award for unpaid rent and/or utilities? Should an order be issued requiring the landlord to undertake repairs to this rental unit? Should any other orders be issued with respect to this tenancy? Are either of the parties entitled to recover the filing fee for their applications from the other party?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on or about April 1, 2017. When the initial one-year term expired the tenancy continued as a month-to-month tenancy. The tenants had been residing in this rental unit when the landlord purchased this rental property in mid-April 2017. Although the landlord entered into written evidence a copy of a Residential Tenancy Agreement dated July 1, 2017, Landlord RL (the landlord) who owns the property through the corporate landlord name identified above, was the only signatory to that Agreement. The landlord maintained that the tenants refused to sign this written tenancy Agreement with the landlord.

Monthly rent was set at \$1,800.00, payable in advance by the first of each month. The tenants were given a monthly credit of \$80.00 towards their payment of utilities, which

reduced their monthly payment to the landlord to \$1,720.00 each month. This credit constituted the landlord's contribution to the utilities for this rental property the tenants shared with another tenant in a separate rental unit. This resulted in the tenants being responsible for 2/3 of the utility cost for this property, an arrangement agreed to by the parties when this tenancy began. The landlord continues to hold the tenants' \$900.00 security deposit and \$900.00 pet damage deposits (the deposits) paid on or about April 15, 2017.

The landlord entered into written evidence a copy of a tenant rent and utility ledger, as well as other documents to support the landlord's claim that as of the date of this hearing \$8,188.71 remains owed by the tenants to the landlord. I have summarized this document as follows:

Month	Rent Due	Utilities Owing	Less Payment Received	Amount Still Owing for that Month
July 2018	\$1,720.00	\$295.30	\$1,023.00	\$992.00
August 2018	\$1,720.00	20.90		\$1,741.00
Sept. 2018	\$1,720.00	250.09		\$1,970.00
Oct. 2018	\$1,720.00	22.95		\$1,743.00
Nov. 2018	\$1,720.00	22.47		\$1,742.00
TOTAL				\$8,188.00

The tenants filed their application on October 16, 2018, within the five-day time frame for doing so after having been deemed to have received the 10 Day Notice. In their application for dispute resolution, the tenants asserted that the landlord had failed to conduct necessary repairs in their rental unit, including a rotting balcony and railing, was responsible for their loss of food, and had unfairly made them responsible for paying for utilities and use of the laundry room by the other tenant in this rental property. The tenants provided the following comments on their application for dispute resolution as to their reasons for failing to pay monthly rent:

...The landlord has given and cancelled this notice 3 times agreed on payments and has not kept his commitments with held due to many major things needed repairing and will not fix nor repair when agreed upon current rent was paid each month and agreed on payments for smaller arrears to be paid for repair...

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “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.”

Based on the evidence before me, I find that the tenants failed to pay \$6,243.29 in rent and utilities that were due within five days of receiving the landlord's 10 Day Notice. Although they applied to cancel the 10 Day Notice in accordance with section 46(4) of the *Act* within the five day period for doing so, I find that they had no legal right to refrain from paying the rent and utilities then owing in full within that time period. There is undisputed sworn testimony and written evidence that the tenants have not made any payments to the landlord following issuance of the 10 Day Notice. There is no evidence that the tenants have obtained the landlord's written agreement to withhold any rent or utility payments. Similarly, there is no evidence that an arbitrator appointed pursuant to the *Act* has issued an order enabling the tenants to withhold any portion of the rent or utilities that have become owing during this tenancy. Under these circumstances, I dismiss the tenants' application to cancel the 10 Day Notice and allow the landlord's application to end this tenancy on the basis of the 10 Day Notice.

Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's

10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy is ending shortly, I make no orders with respect to repairs identified in the tenants' application.

Based on the landlord's sworn testimony and written evidence and in the absence of any significant details from the tenants that call into question the accuracy of the amounts claimed by the landlord, I allow the landlord's claim for a monetary award totaling \$8,188.00 for unpaid rent and utilities currently owing. As the landlord has been successful in their application, I also allow the landlord to recover their \$100.00 filing fee from the tenants.

Although the landlord's application does not seek to retain the deposits from this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' pet damage and security deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I dismiss the tenants' application to cancel the 10 Day Notice and allow the landlord's application to end this tenancy on the basis of the 10 Day Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain unpaid rent, utilities and recovery of their filing fee for their application, and to retain the tenants' deposits:

Item	Amount
July 2018 Rent and Utilities Owing	\$992.00
August 2018 Rent and Utilities Owing	1,741.00
September 2018 Rent and Utilities Owing	1,970.00
October 2018 Rent and Utilities Owing	1,743.00

November 2018 Rent and Utilities Owing	1,742.00
Less Deposits(\$900.00 + \$900.00 = \$1,800.00)	- 1,800.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$6,488.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

All aspects of the tenants' application for a monetary award are dismissed with leave to reapply. As this tenancy is ending shortly, I issue no orders with respect to repairs or any other matters relating to the tenant's application.

This final and binding 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 26, 2018

Residential Tenancy Branch