



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

**MNRL OPL OPR FFL (landlord);
CNL CNR ERP LRE OLC PSF RP RR FFT (tenant)**

Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to sections 46, 49 and 55;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenants under the Residential Tenancy Act (the *Act*) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“Ten Day Notice”) pursuant to Section 46(4);
- An order cancelling a Two Month Notice to End Tenancy for Landlords’ Use (“Two Month Notice”) pursuant to section 49;
- An order requiring the landlords to provide emergency repairs pursuant to sections 32 and 62;
- An order to suspend or restrict the landlords’ right to enter pursuant to section 70;
- An order requiring the landlords to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62(3);
- An order requiring the landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);

- An order requiring the landlords to provide emergency repairs pursuant to sections 32 and 62;
- An order requiring the landlords to provide repairs pursuant to sections 32 and 26; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given opportunity to be provide affirmed testimony, present evidence, cross examine the other party and make submissions. The tenants raised no issues of service. I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

I note that Section 55 of *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 is compliant with the *Act*.

Preliminary Issue - #1

The tenants testified they served the landlords with their Notice of Hearing and materials on January 18, 2019 and February 10, 2019; part of the documents was served on the first date and the remainder on the later date. They testified they served a complete set of all the documents a second time on February 13, 2019. Both tenants testified the service took place in the presence of both tenants.

The landlords denied the tenants served the documents.

Section 89 sets out how a party must serve the other. One of the methods is by personal service. The party must demonstrate to the satisfaction of the arbitrator that one party served the other with documents upon which reliance will be made as evidence in the hearing.

Section 3.5 of the Rule of Procedure state as follows:

*3.5 Proof of service required at the dispute resolution hearing
At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute*

Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The landlords testified they are a mother living in the building in which the unit is located and her adult daughter who lives nearby. The parties testified to frequent contact. I find it is likely that the tenants served the landlords as they testified. Considering the testimony of the parties and the burden of proof, I find the tenants have established to my satisfaction that they served the landlords with the documents as claimed by the tenants.

Accordingly, I find the tenants served the landlords with their Notice of Hearing and materials pursuant to section 89 of the Act.

Preliminary Issue # 2

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenants’ application to the cancel the Ten-Day Notice and the Two Month Notice; therefore, they are dismissed with leave to reapply:

- An order requiring the landlords to provide emergency repairs pursuant to sections 32 and 62;
- An order to suspend or restrict the landlords’ right to enter pursuant to section 70;
- An order requiring the landlords to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62(3);
- An order requiring the landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order requiring the landlords to provide emergency repairs pursuant to sections 32 and 62; and
- An order requiring the landlords to provide repairs pursuant to sections 32 and 26.

Preliminary Issue # 3

The parties agreed that the tenants paid a security deposit of \$800.00 at the beginning of the tenancy which the landlords hold. The tenants have not provided written authorization to the landlords to apply the security deposit to outstanding rent.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlords, further to Rule 4 I find the tenants could reasonably have anticipated that the landlords would claim a monetary order for outstanding rent for February 2019 as well as authorization to apply the security deposit to the monetary award. I accordingly allow the landlords to amend the application as sought.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice and the Ten-Day Notice pursuant to sections 47 and 49 of the *Act*?
2. If the tenants' applications are dismissed, are the landlords entitled to an order of possession, pursuant to section 55 of the *Act*?
3. Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67?
4. Is either party entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed they entered into a month-to-month tenancy for a basement suite in the landlords' building for monthly rent of \$1,700.00 payable on the first of the month. The tenancy began on December 1, 2018 and is ongoing. The landlord PS lived alone in the upstairs apartment. The landlord RS, her adult daughter, lived nearby.

The parties submitted a copy of the tenancy agreement which stated the tenants will receive *“free laundry 2 days a week”*.

The parties testified that the tenants paid a security deposit at the beginning of the tenancy in the amount of \$800.00 which the landlords hold. The tenants have not provided the landlords with any authorization to retain the security deposit.

The tenants paid rent for the first month, December 2018. The parties agreed that their relationship began to deteriorate shortly after the tenants moved in.

The tenants testified that immediately upon occupying the unit, they became aware of an unpleasant odour which they suspected came from dead and rotting vermin in the walls. The tenants claimed they heard rats fighting and dying within the walls of their unit. They immediately notified the landlords. The landlords retained the services of a pest control company and paid for the inspection. The landlords did not submit a copy of the inspection report. The tenants claim they spoke to the inspector for the pest control company who confirmed the presence of rats; the landlords stated the inspector confirmed rats were a risk, but they were not present in the unit.

The tenant submitted dated photographs purporting to be of rat feces; they also submitted a photograph of a dead mouse which they stated they found in one of the bedrooms of the unit. The tenants claimed the landlords ignored their complaints and the parties increasingly argued over the issue.

The tenants also complained to the landlords about faulty light fixtures and the failure to keep access to the unit free of snow and ice. The tenants submitted photographs of snow covered pathways. They further claimed the landlords stopped their access to laundry services.

The landlords replied that they did their best to keep access to the unit free of snow and ice which was difficult given the snowfall at that time. The landlords acknowledged they stopped the tenants from accessing laundry services in early January 2019 as the male tenant was verbally abusive to the landlord RS who was unwell and elderly. The male tenant denied this and stated he only wanted a healthy, vermin-free place in which to live and any arguments resulted from the landlords' failure to eliminate the vermin.

The landlords testified they served the tenants with a Two Month Notice on January 8, 2019 with an effective date of March 31, 2019; they also served a Ten-Day Notice on

January 11, 2019 with an effective date of January 19, 2019 (corrected to January 21, 2019). The landlords submitted copies of the Notices as evidence. The tenants acknowledge personal service of both notices on the respective dates of issuance.

The Ten-Day Notice provided the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of January 19, 2019 (corrected to January 21, 2019).

The Two Month Notice stated the landlords intended to occupy the rental unit.

The tenants stated they attempted to transfer \$1,200.00 of the rent due for January 2019 in early January 2019. The landlords acknowledged they declined to accept anything less than the full amount of the rent. The tenants claimed they attempted to pay the remaining \$500.00 some days later in cash but the landlords refused to accept the money. The landlords deny the tenants tried to pay \$500.00 in cash. The tenants acknowledged the landlords have not received rent for January or February 2019 and they made no subsequent effort to pay outstanding rent.

The landlords testified that landlord PS suffered a stroke and she lived alone in the unit above the tenants. The landlord RS testified she is PS's only child and is responsible for the care of landlord PS. They testified the landlord PS's medical condition deteriorated in early January 2019. Accordingly, the landlords issued the Two Month Notice requiring the tenants to vacate the unit so that landlord RS could move in to the unit and more conveniently care for her mother, landlord PS, who would continue to live upstairs.

The tenants denied that they owe the landlords any money for rent. They claimed the landlord owes them money for failure to provide laundry services and refusal to deal effectively with vermin in the unit, thereby subjecting the tenants' and their family to unhealthy living conditions and disruption.

During the hearing, the landlords agreed the tenants may withhold rent for the month of February 2019 as compensation payable by the landlords pursuant to section 51(1) of the Act.

The tenants brought an application for dispute resolution on January 15, 2019. They continue to occupy the unit.

The landlords submitted a monetary order worksheet which included a claim for \$700.00 for a security camera. However, the landlords did not provide any evidence with respect to this claim at the hearing. Accordingly, I dismiss this aspect of the landlords claim without leave to reapply.

The following is a summary of the landlords' monetary claim for which the landlords provided evidence at the hearing:

ITEM	AMOUNT
Outstanding rent – January 2019	\$1,700.00
Outstanding rent – February 2019	\$1,700.00
Monetary Award Requested	\$3,400.00

The landlords agreed at the hearing to compensation of one month's rent pursuant to section 51(1) and requested authorization to apply the security deposit to the monetary award, as follows:

ITEM	AMOUNT
Monetary Order Requested	\$3,400.00
(Less deposit)	(\$800.00)
(Less one month rent – compensation s. 51(1))	(\$1,700.00)
TOTAL	\$900.00

The landlords requested reimbursement of the filing fee in the amount of \$100.00 for a total monetary claim of **\$1,000.00**.

Analysis

I have reviewed all documentary evidence and testimony. I examine the landlords' application for an order of possession with respect to the Ten-Day Notice first as well as the tenants' application to cancel the notice.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlords served the tenants with the Ten-Day Notice on January 19, 2019 (corrected to January 21, 2019) in accordance with section 88 of the *Act*.

I find the tenants did not pay the overdue rent within the five-day period following service. The tenants applied to dispute the Ten-Day Notice on January 15, 2019, within 5 days of service.

Section 26(1) of the Act states as follows:

26 (1)*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.*

The tenants withheld rent for January 2019 because of a dispute with the landlords over the presence of vermin in the unit and various claimed unmet obligations of the landlords'. According to section 26, the tenants must pay rent ***whether or not the landlord complies with the Act.***

I find the tenants did not pay rent for January 2019 pursuant to section 26. I find the tenants have not complied with the *Act*. I therefore dismiss the tenants' application to cancel the Ten-Day Notice without leave to reapply.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice, January 19, 2019 (corrected to January 21, 2019) requiring the tenants to vacate the rental unit by that date.

As the tenants continues to occupy the unit, I find the landlords are entitled to an order of possession under sections 46 and 55, effective two days after service.

I therefore grant the landlords an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlords, I grant the landlords a monetary award for outstanding rent in the amount of \$1,700.00.

Further to section 72, I grant the landlords authority to apply the security deposit of \$800.00 to the monetary award.

As the landlords were successful in this application, I grant a monetary order in the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlords a monetary order in the amount of \$1,000.00 calculated as follows:

ITEM	AMOUNT
Outstanding rent	\$1,700.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$800.00)
Monetary Order	\$1,000.00

As I have granted the landlord an order of possession pursuant to the Ten-Day Notice, I find there is no need to consider an application for an order of possession under the Two Month Notice and the tenants' application to cancel the Two Month Notice. The applications with respect to the Two Month Notice are dismissed without leave to reapply.

Conclusion

I grant the landlords a monetary order in the amount of **\$1,000.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I grant the landlords an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: March 3, 2019

Residential Tenancy Branch