



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST KOOTENAY PROPERTY RENTALS INC
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR-DR, OPRM-DR, MNRL-S, MNDCL-S, FFL; MT-CNR, MNDCT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 3, 2020 ("10 Day Notice") pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46; and
- a monetary order for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The "male tenant" did not attend this hearing, which lasted approximately 69 minutes. The female landlord ("female owner"), the "male owner," the landlords' agent, and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The two "owners" of the rental unit confirmed that their agent had permission to represent them at this hearing, as she was their property manager (collectively "landlords"). The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants").

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the female owner's surname. Both parties consented to this amendment during the hearing.

The landlords' agent confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application.

The tenant confirmed receipt of the landlords' 10 Day Notice on February 3, 2020. The landlords provided a signed, witnessed proof of service. The landlords' agent confirmed that the notice was served to the tenants on the above date by leaving a copy in their mailbox. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 10 Day Notice on February 3, 2020.

Preliminary Issue - Previous Hearings and Service of Documents

The landlords' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("original hearing"). A decision, dated February 27, 2020 ("original decision"), was issued by an Adjudicator for the direct request proceeding. The original decision was based on the landlords' paper application only, with no submissions made by the tenants. The original decision granted the landlords a two-day order of possession ("original order of possession") and a \$600.00 monetary order ("original monetary order") for February 2020 rent of \$500.00 and the \$100.00 application filing fee, against the tenants.

The tenants applied for a review of the direct request decision, alleging they were unable to attend the original hearing. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated March 9, 2020 ("review decision"). As per the review decision, the tenants were required to serve the landlords with a copy of the review decision and the notice of review hearing. The landlords were also required to serve their original application to the tenants.

The landlords' agent confirmed receipt of the review documents and the tenant confirmed receipt of the landlords' original application. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the review documents and the tenants were duly served with the landlords' original application.

The review decision joined the landlords' application to be heard together with the tenants' application, which was already scheduled for this hearing date on April 27, 2020. Accordingly, I proceeded with hearing both parties' applications together. Both parties consented to proceeding with the hearing with no objections.

Preliminary Issue – Increasing Landlords' Monetary Claim

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase their monetary claim to include March and April 2020 rent and unpaid hydro utilities.

The landlords filed an amendment on April 9, 2020 to increase their monetary claim from what was requested in the original hearing. The landlords asked to include March and April 2020 rent, as well as unpaid hydro utilities. The tenant was aware of the above information and made submissions about it during the hearing.

The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlords would pursue all unpaid rent at this hearing. The tenant was aware of and made submissions regarding the landlords' amended claims for unpaid rent and hydro utilities. For the above reasons, I find that the tenants had appropriate notice of the landlords' claims. Therefore, I heard the landlords' claims for unpaid rent and hydro utilities below.

Issues to be Decided

Are the tenants entitled to more time to make an application to cancel the landlords' 10 Day Notice?

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent and utilities?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee paid for their application?

Are the tenants entitled to a monetary order for damage or loss under the *Act, Regulation* or tenancy agreement?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 20, 2019. Monthly rent in the amount of \$1,150.00 is payable on the first day of each month. The tenants owe 35% of the total hydro utilities in addition to rent. A security deposit of \$575.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

Both parties agreed to the following facts. The landlords' 10 Day Notice was issued to the tenants for unpaid rent of \$500.00 due on February 1, 2020. The tenants paid rent of \$500.00 to the landlords for February 2020 on April 5, 2020. The tenants paid rent of \$1,700.00 to the landlords for March and April 2020 on April 18, 2020, leaving a balance of \$600.00 owing for April 2020. The tenants did not pay any hydro utilities to the landlords from January to March 2020, totaling \$471.53. The hydro utilities are \$180.09 for January 2020, \$159.98 for February 2020, and \$131.46 for March 2020.

The landlords seek an order of possession based on the 10 Day Notice, a monetary order of \$600.00 for unpaid rent for April 2020, \$471.53 for unpaid hydro utilities from January to March 2020, and the \$100.00 filing fee. The landlords' agent spent the majority of the hearing time calculating the unpaid hydro owing by the tenants, to date. She stated that there were unpaid hydro utilities for August 2019 in the amount of \$64.55. She initially indicated that the tenant failed to pay utilities of \$128.82 for December 2019 hydro but when the tenant indicated that she paid it on January 21, 2020, the landlords' agent confirmed that she did.

The tenants seek for more time to cancel the landlords' 10 Day Notice and cancellation of the notice. The tenant claimed that she tried to file an application on February 5, 2020, to dispute the landlords' 10 Day Notice, but the RTB online system was down and she was unable to properly file until February 18, 2020.

The tenant maintained that she was confused as to what was owing for rent and hydro utilities because the landlords' agent "mixed up the books" and did not properly balance the amounts, since the beginning of the tenancy. She said that the landlords owed her \$300.00 in February 2020 rent for a broken door, which the landlords' agent claimed she credited in January 2020. The tenant testified that she knew she had rent and hydro utilities owing, and although she wanted to wait until the RTB hearing to sort it all out, she made payments towards the rent because she felt bad for the owners. She confirmed that she was undergoing serious health issues and treatment, so the male tenant was handling the finances. She explained that since the COVID-19 pandemic, she was attempting to receive medical benefits. She maintained that she did not know how long the tenants would be living at the rental unit, so they did not pay the full rent on time each month, particularly in March and April 2020.

The tenants seek a monetary order for \$200.00. The tenant said that she had to take time off from work and take taxis in order to pay the landlords' agent rent on weekdays, rather than weekends. She claimed that she works late on weekdays, and she had to go to her bank on weekdays to get rent, for which she incurred fees, since the banks were closed on the weekends. She explained that she did not provide proof in the form of receipts or other such documentary evidence. The landlords' agent claimed that their bank was open on weekends, which the tenants could use to deposit their rent.

Analysis

Pursuant to section 66 of the *Act*, I allow the tenants more time to make an application to cancel the landlords' 10 Day Notice. Although the tenants filed their application on February 18, 2020, which is past the effective date of the notice on February 16, 2020, I accept the tenant's testimony that she attempted to file it earlier but there were issues with the RTB online filing system.

The landlords provided undisputed evidence at this hearing, as the tenant agreed with the unpaid rent and hydro utilities and the dates of payments. The tenants failed to pay the full rent due on February 1, 2020, within five days of receiving the 10 Day Notice. Although the tenants filed an application pursuant to section 46(4) of the *Act*, they did not pay the full rent owed within five days, nor did they show that they had an order from an Arbitrator to reduce their rent or use it for emergency repairs.

I found the landlords' agent's evidence regarding the unpaid hydro utilities to be confusing, since she was calculating and readjusting amounts constantly during the hearing. However, I found that the rent amounts were straightforward, the tenants were aware of them, and it was indicated as \$1,150.00 due on the first day of each month, in their tenancy agreement. The \$500.00 rent amount indicated in the 10 Day Notice was not paid by the tenants until more than two months later on April 5, 2020. I find that the tenants understood rent was due, as the hydro utility amounts were not indicated in the 10 Day Notice. I find that the tenants chose not to pay these rent amounts, even for March and April 2020, until April 18, 2020, which was late and not full payments. Even if the tenants were owed a credit of \$300.00 for the broken door, which was given in January 2020, they still had unpaid rent owing for February 2020.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on February 16, 2020, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by February 16, 2020. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. The original order of possession, dated February 27, 2020, has already been issued at the original hearing and I confirm it. Therefore, the tenants' application to cancel the landlords' 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply.

The landlords provided undisputed evidence and the tenant agreed that the tenants failed to pay rent of \$600.00 for April 2020 and hydro utilities of \$471.53 from January to March 2020. Therefore, I find that the landlords are entitled to \$1,071.53 for unpaid rent and hydro utilities.

I dismiss the landlords' application for unpaid utilities prior to January 2020, without leave to reapply, as the landlords' agent was calculating the amounts during the hearing, she continuously changed her testimony as to what was owed and paid, and the information was confusing and unorganized.

As the landlords were mainly successful in their application, I find that they are entitled to recover the \$100.00 filing fee paid for it.

The landlords continue to hold the tenants' security deposit of \$575.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' entire security deposit of \$575.00 in partial satisfaction of the monetary award.

I issue a new monetary order in the amount of \$596.53 for the rent, hydro utilities and filing fee. I cancel the original monetary order, dated February 27, 2020, for \$600.00, issued at the original hearing.

I dismiss the tenants' application for \$200.00. I find that the tenants failed to provide invoices, receipts, paystubs, employment letters or other such documentary evidence to support their claims. I find that the tenants were unable to prove that the tenant took time off work, took taxis, or incurred any other expenses for paying the landlords' agent rent on weekdays rather than weekends.

Original Decision and Orders

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

I set aside the original decision, dated February 27, 2020. I confirm the original order of possession, dated February 27, 2020. I set aside the original monetary order, dated February 27, 2020, for \$600.00. I issue a new monetary order to the landlords against the tenants for \$596.53.

I caution the tenants to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Conclusion

This original decision and original monetary order for \$600.00, both dated February 27, 2020, are set aside.

The original order of possession, dated February 27, 2020, is confirmed.

I issue a new monetary order in the landlords' favour in the amount of \$596.53 against the tenants. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the landlords to retain the tenants' entire security deposit of \$575.00.

The landlords' application for unpaid hydro utilities prior to January 2020 is dismissed without leave to reapply.

The tenants' application for more time to make an application to cancel the landlords' 10 Day Notice is allowed.

The tenants' application to cancel the landlords' 10 Day Notice and for a monetary order for \$200.00 is dismissed without leave to reapply.

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: April 27, 2020

Residential Tenancy Branch