



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNC CNR MNDCT OLC RP PSF LRE RR FFT
For the landlords: MNRL FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of \$5,600.00 for unpaid rent or utilities, and for the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2020 (10 Day Notice), and a 1 Month Notice to End Tenancy for Cause dated February 5, 2020 (1 Month Notice). The tenants also applied for a monetary order in the amount of \$22,650.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for an order directing the landlord to provide services or facilities agreed upon but not provided, for an order to limit the landlords' right to enter the rental unit, site or property, for a rent reduction and for the filing fee.

The landlords BW and AW (landlords) and the tenants JAF, MF, LMF, and JJF (tenants) attended the teleconference hearing and were affirmed. A witness for the tenants FL (witness) attended but did not testify. The landlords and tenants gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed that they were served with the landlords' application, documentary evidence and the Notice of Dispute Resolution Proceeding (Notice of Hearing). As a result, I find the tenants were sufficiently served.

The landlords testified that they were not served with the tenants' application and only became aware of the hearing scheduled for the tenants by way of a reminder email from the Residential Tenancy Branch (RTB). The tenants denied receiving the original Notice of Hearing dated February 26, 2020, even though file records support that the tenants were served that Notice of Hearing by email on February 26, 2020. As a result, a tenant testified that they called the RTB on March 16, 2020 to inquire about their application and that they served something on March 12, 2020; however, could not be specific as to what was served. A tenant then stated they were advised by the RTB that the other party had been served by the RTB and that the tenant did not need to serve them, which the parties were advised could not be correct as the RTB does not serve either party on behalf of any applicant and that the Rules of Procedure (Rules) require the applicant(s) to serve the respondent(s).

Given the above, the parties were advised that I was not satisfied that the tenants served the landlords with their application, Notice of Hearing and documentary evidence. Therefore, I dismiss the tenant's application due to a service issue, with leave to reapply. I note that my decision does not extend any applicable timelines under the Act. Consequently, the hearing continued with consideration of the landlords' application only.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to the parties. Any orders granted will be emailed to the appropriate party for service on the other party.

Background and Evidence

A copy of a fixed-term tenancy agreement was submitted in evidence. The tenancy began in 2014 and a new fixed-term agreement was signed effective July 1, 2019. The tenants continue to occupy the rental unit. Monthly rent is \$2,550.00 per month and is due on the first day of each month.

The landlords admitted that their original claim contained an addition error and as a result, I find the landlord's claim of \$5,600.00 is actually \$5,200.00, which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for March 2020	\$2,550.00
2. Unpaid rent for April 2020	\$2,550.00
3. Filing fee	\$100.00
TOTAL	\$5,200.00

Regarding items 1 and 2, the landlords testified that the tenants failed to pay rent of \$2,550.00 for both months of March and April of 2020. The tenants confirmed receipt of the 10 Day Notice on March 3, 2020. The tenants applied to dispute the 10 Day Notice on March 6, 2020, which is within the 5-day timeline to dispute a 10 Day Notice. During the hearing the tenants confirmed they did not pay March or April 2020 rent and did not have an order from an arbitrator to withhold rent.

The effective vacancy date of the 1 Month Notice was March 31, 2020, which is after the effective vacancy date of the 10 Day Notice listed as March 15, 2020.

Regarding item 3, I will address the filing fee later below.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlords did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Order of possession – Firstly, the tenants confirmed that rent for March and April 2020 in the total amount of \$5,100.00 have not been paid. The tenants also confirmed that they did not have an order from an arbitrator that would authorize them not to pay rent. Therefore, I find the 10 Day Notice is valid and that the tenancy ended on the effective vacancy date, which was March 15, 2020. As such, I grant the landlord an order of

possession pursuant to section 55 of the Act, effective five (5) days from service on the tenant. Given the current State of Emergency and *Ministerial Order M089*, I have used five days instead of two days. The link to *Ministerial Order M089* is located at:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

Given the above, I find it is not necessary to consider the 1 Month Notice as the effective vacancy was March 31, 2020, and I find the tenancy ended based on the 10 Day Notice, which was March 15, 2020.

Monetary claim - Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

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.

[Emphasis added]

Given the above, I find the tenants breached section 26(1) of the Act and as a result, I find the landlords have met the burden of proof for this item. In addition, I find the tenants provided insufficient evidence that they had any right under the Act to withhold rent. Therefore, I grant the landlords **\$5,100.00**, which is comprised of \$2,550.00 owing for March 2020 rent, and \$2,550.00 owing for April 2020 rent.

As the landlords' application has merit, I grant the landlords **\$100.00** pursuant to section 72 of the Act for the full recovery of the cost of the filing fee. This brings the landlords' total monetary claim to **\$5,200.00** as a result.

As the landlords stated that they do not wish to offset the amount owed with the tenants' security deposit, I grant the landlords a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlords in the amount of **\$5,200.00**.

Conclusion

The tenants' application did not proceed due to a service issue. The tenants have leave to reapply; however, this decision does not extend any applicable timelines under the Act.

The landlord's application is fully successful.

The tenancy ended on March 15, 2020. The landlords have been granted an order of possession effective five (5) days after service on the tenants. The restrictions of *Ministerial Order M089* apply due to COVID-19, and a link is provided above.

The landlords have established a total monetary claim of \$5,200.00 and the landlords have been granted a monetary order in that amount. Should the landlords require enforcement of the monetary order, the landlord must first serve the tenants with the monetary order. The order may then be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision will be emailed to the parties as indicated above. The monetary order and order of possession will be emailed to the landlords only for service on the tenants as necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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