



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, DRI, MNDCT, FFT / MNRL, MNDCL, OPU, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlords’ for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$25,664.10 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified they served that the tenant with the notice of dispute resolution form via registered mail on March 20, 2020. The landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. They testified they served the tenant with their documentary evidence via email 15 days prior to this hearing.

I find that the landlords served the tenant with the required documents in accordance with sections 88, 89, and 90 of the Act, and in accordance with *Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act)* made March 30, 2020 (the “**Emergency Order**”).

The landlords testified they were served with the tenant’s notice of dispute resolution form on March 26, 2020 via email, and that they never received any documentary evidence from the tenant.

Preliminary Issue – Effect of Tenants’ Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlords bear the evidentiary burden to prove that the Notice is valid and that they are entitled to the monetary order sought. The tenant bears the onus to prove that she is entitled to the relief sought in her application, other than the relief of having the Notice cancelled.

As the tenant failed to attend this hearing, I find that she has failed to discharge her evidentiary burden to prove that she is entitled to the relief sought. Pursuant to Rule of Procedure 7.4, the tenant (or her agent) must attend the hearing and present her evidence for it to be considered. As this did not occur, I have not considered any of the documentary

evidence submitted by the landlord to the Residential Tenancy Branch in advance of the hearing.

I dismiss the portions of the tenant's application not relating to the validity of the Notice without leave to reapply.

Preliminary Issue – Jurisdiction

The parties entered into a written tenancy agreement starting June 1, 2012. Monthly rent is \$4,000 and is payable on the first of each month. Utilities, including water, are not included in the monthly rent. The tenant did not pay the landlord a security or pet damage deposit at the start of the tenancy.

The tenancy agreement contains a lengthy addendum, which gave the tenant an "option to purchase" the residential property. The addendum required the tenant to exercise this option by April 30, 2017. The addendum also required the tenant to provide a "non-refundable deposit" of \$60,000 to the landlords, which would be applied against the purchase price of the residential property, should the tenant exercise the option. The addendum stipulated that the "in the event the tenant at any time defaults under the terms of the [tenancy agreement] or under the terms of the option to purchase the deposit herein shall be absolutely forfeited to the [landlords]."

The landlords testified that the tenant exercised her option to purchase the residential property prior to April 30, 2017, but then subsequently backed out of the agreement.

Policy Guideline 27 considers such rent-to-own arrangements. It states:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;
- there was a right to purchase in a tenancy agreement and whether it was exercised.

Based on the evidence before me, I find that the tenant does not have an ownership interest in the residential property. I find that none of the money she has provided to the landlords has been applied to the purchase price. She does not have an interest in the property higher than a right to possession. I find that, while there was an option to purchase in the tenancy agreement, this option has now expired.

As such, I find that I have jurisdiction to hear the landlord's application. **Issues to be Decided**

Are the landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for \$25,664.10; and
- 3) recover their filing fee?

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

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

As stated above, the parties entered into a tenancy agreement starting June 1, 2012. Monthly rent is \$4,000 and is payable on the first of each month. Utilities, including water, are not included in the monthly rent.

The landlords testified that the tenant has not paid any rent since for the months of January to May 2020, inclusive. They testified that the tenant had provided cheques in the amount of \$4,000 for the monthly rent of January and February 2020, but that the cheques could not be cashed, as there were insufficient funds in the amount. They testified they incurred two NSF charges of \$6 each as a result.

They testified that the tenant has not paid any part of the water bill for the residential property since 2012. They testified that they have paid it every year as part of their property taxes.

The landlord testified that the water bill is sent to the residential property every year, and that they have asked the tenant to pay the bills on numerous occasions, both verbally, and in writing via email or text message. The landlord included two such emails in their documentary evidence.

The landlords testified that. Despite this, the tenant has not paid any part of the water bills since 2012. They submitted in evidence copies of the annual water bills issued by the municipality. In total, the water bills the tenant is required to pay under the tenancy agreement amount to \$5,664.10 (from December 2012 to December 2019).

The landlords also claim to cost of mailing the application materials to the tenant (\$12.27).

On February 28, 2020, the landlords served the tenant with the Notice in person. The Notice stated that the tenant was in arrears of \$8,000 as of February 1, 2020. It specified an effective date of March 9, 2020. The tenant filed to dispute the Notice on March 2, 2020.

The landlords testified that, to date, the tenant has paid no part of the rental arrears or the unpaid utilities. In total, the landlords seek a monetary order of \$25,788.37 representing:

Rental Arrears (January to May 2020)	\$20,000.00
Unpaid Utilities (2012 to 2019)	\$5,664.10
NSF fee	\$12.00
Filing Fee	\$100.00
Cost of registered mail	\$12.27
Total	\$25,788.37

Analysis

I accept the landlords' undisputed evidence in its entirety.

I find that the tenant was obligated to pay monthly rent in the amount of \$4,000. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$20,000, comprised of the balance of unpaid rent owed as of May 1, 2020.

I find that the tenant is obligated to pay for the water utilities pursuant to the tenancy agreement. I find that from 2012 to 2019, the total amount of the water bill for the residential property from the start of the tenancy agreement to the end of 2019 is \$5,664.10. The tenant did not pay any portion of this amount. I accept the landlord's testimony that they paid this amount when they paid their property tax. I find that the tenant breached the tenancy agreement by failing to pay the water bills as required. I find that the landlords suffered damage in the amount of \$5,664.10 (the amount of the water bills) as a result of the tenant's breach. Accordingly, pursuant to section 7 of the Act, the tenant must compensate the landlord this amount.

I find that the tenant provided two cheques to the landlord for rent payments for January and February 2020, but that the landlord was unable to cash them due to insufficient funds in the tenant's account. I find that, as a result, the landlord incurred a cost of \$6

per bounced cheque (\$12 total). Per section 7 of the Act, the tenant must compensate the landlords this amount.

The final portion of the landlords' monetary application concerns the registered mailing costs incurred in servicing this application. An arbitrator's ability to award compensation is restricted by section 67 of the Act which are limited to claims where damage has stemmed directly from a breach of the tenancy agreement or Act by the opposing party. I have no ability to reimburse the costs associated with preparing for a hearing and decline to award the landlords a return of the registered mailing costs.

I find that the landlords served the tenant with the Notice on February 28, 2020. As stated above, I find that the tenant has failed to pay monthly rent as required by the tenancy agreement. As such, I find that the Notice is valid.

Upon review of the Notice, I find that it complies with the form and content requirements of section 52 of the Act.

Accordingly, pursuant to section 55(2)(a), I order the tenant provide vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and the attached orders by the landlord.

Pursuant to section 72(1) of the Act, as the landlords have been successful in the application, he/she/they may recover their filing fee from the tenant.

Conclusion

Pursuant to sections 67, and 72 of the Act, I order that the tenant pay the landlords \$25,776.10, representing the following:

Rental Arrears (Jan to May)	\$20,000.00
Unpaid Utilities (2012 to 2019)	\$5,664.10
NSF fee	\$12.00
Filing Fee	\$100.00
Total	\$25,776.10

Pursuant to section 55(2)(a) of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlords.

The Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of British Columbia unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act. As such, it may not be filed in the Supreme Court of BC until the state of emergency declared March 18, 2020 ends (as per section 1 of the Emergency Order).

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: May 11, 2020

Residential Tenancy Branch