



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent and unpaid utilities;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord submitted that the tenants were served with her application package, containing the notice of hearing, by email.

The Director's Order, signed on March 30, 2020, in response to the State of Emergency made under the *Emergency Program Act* on March 18, 2020, orders that until the declaration of the state of emergency is cancelled or expires without being extended, a party may serve documents to the other party by, among others, email to the email address of that person.

The tenants attended and confirmed they had received the landlord's application.

Both parties confirmed receiving the other's evidence and I therefore find each party was sufficiently served with the other's evidence.

The hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent?

Is the landlord entitled an order for monetary compensation?

Is the landlord entitled to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that the tenancy officially began in September 2019; however, she allowed the tenants to move into the rental unit in August 2019, giving the tenants free rent for that month as they were to do some work on the rental unit.

A copy of a written tenancy agreement was submitted into evidence. The tenancy agreement shows that monthly rent is \$1,500, due on the first day of the month.

The landlord submitted that the tenants failed to pay the monthly rent for February and March 2020, and that as a result, they were served with a 10 Day Notice to End Tenancy for Unpaid Rent, by personal service on March 9, 2020, listing total unpaid rent of \$3000 owed as of March 1, 2020. The effective move-out date listed on the landlord's copy of the Notice was indecipherable. The tenants' copy of the Notice showed a move-out date of March 23, 2020.

The Notice informed the tenants that they had five (5) days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenants are presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notice, the tenants have not made any rent payments, and remain in the rental unit without paying any other rent for April, May, or June 2020. The landlord claims that the tenants owe a rent deficiency of \$7500, through June 2020, and that because of this, they are requesting an order of possession for the rental unit and a monetary order for unpaid rent.

As to the landlord's claim for unpaid utilities, the landlord said the tenants failed to transfer the hydro account into their name, and as a result, she paid those bills until the account was switched out of her name. The landlord submitted copies of the hydro bills to support her claim of \$755.98. The bills show the landlord's name on the account.

Tenants' response –

The tenants confirmed that they had not paid the monthly rent for February, March, April, May, and June 2020. The tenants, however, claimed that they did not owe the landlord rent due to their agreement that they could do work around the rental unit and residential property for a rent credit.

The tenants submitted a copy of a handwritten document to support their assertion. The handwritten document shows that the landlord and tenants signed an agreement that the house needed major renovations, that the monthly rent was \$1,500 and that "up to \$1000.00 per month can come off rent for the purpose of fixing house".

I asked the tenants several times what their interpretation of this document was, and their interpretation was not made clear to me. The tenants did state that they performed major work around the house and that they had never received any deductions. The tenants also said they had incurred major expenses and the landlord has not paid them or given them rent credit.

The tenants submitted photographs in and around the rental unit, receipts and what appears to be a punch list of work performed.

The evidence also showed that the tenants had previously filed an application for dispute resolution on or about March 16, 2020. In this application, the tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the one at issue here;

- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to make repairs to the rental unit for health or safety reasons;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- compensation for the cost of emergency repairs.

A hearing was held on May 12, 2020, on the tenants' application, and the tenants and the landlord attended.

A Decision was issued by the arbitrator conducting that hearing, which was dated May 12, 2020.

The arbitrator dismissed the entirety of the tenants' application, with leave to reapply, due to the inappropriate behaviour of the tenants during the hearing.

That file number is referred to in the style of cause page of this Decision.

Landlord's rebuttal –

The landlord said that if the tenants were going to do major renovations around the house, she would have expected receipts. The landlord said that the tenants overstepped a lot of boundaries and did a lot of work not authorized.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and

tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenants that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

Although the tenants did file an application for dispute resolution in dispute of the Notice, that application was dismissed by another arbitrator in a Decision on May 12, 2020.

I have reviewed the tenancy agreement submitted into evidence. I have also reviewed the handwritten document signed by the parties, stating that \$1,000 can come off the monthly rent of \$1,500 for the purpose of fixing the house.

I find a reasonable interpretation of this document is to allow the tenants to deduct up to \$1,000 in each month in which work has been performed. I would expect, however, that the tenants would have to provide proof or permission for each month's rent deduction up to \$1,000. I find the very minimum the tenants were required to pay was \$500 per month.

Instead of receiving permission for each month's deduction, the undisputed evidence is that the tenants failed to pay any rent, not even \$500, for the months of February, March, April, May or June 2020, and have remained in the rental unit.

I therefore find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed the unpaid rent listed and did not pay the outstanding rent or any rent within 5 days of service.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant her an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

The order of possession for the rental unit is included with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for

enforcement as an order of that Court. The tenants are advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenants.

Although I have ordered the tenancy will end pursuant to section 46 and 55(1)(b) of the Act, *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

I advise the tenants of the following taken from the Residential Tenancy Branch (RTB) website:

Tenants should pay rent wherever possible. The legislation still requires that tenants pay rent in full and on time.

- **The state of emergency temporarily suspends a landlord's ability to end a tenancy if a tenant does not pay the rent in full and on time.**
- **A tenant who has not paid rent could face eviction once the state of emergency is over.**

Monetary Order –

Although the landlord's monetary claim for unpaid rent was \$6,000, I find it reasonable under Rule 4.2 to amend the landlord's application to increase her claim to include unpaid rent for June 2020, or \$1,500 for the months of February, March, April, May and June 2020, each, as the tenants have remained in the rental unit without paying rent.

I find that the landlord submitted sufficient evidence to show that the tenants owed unpaid rent of \$3,000 for February and March 2020, the amount listed on the Notice, and \$1,500 for April, May, and June 2020, each, or \$7,500 in total. I therefore find the landlord is entitled to a monetary award of \$7,500, for unpaid rent, through June 2020.

As to the landlord's claim for unpaid utilities, I find the written tenancy agreement did not provide for utilities for the tenant and that they were responsible for the cost of their own utilities. I find the landlord submitted sufficient evidence to show the amount owed by the tenants to be \$755.98.

I therefore grant the landlord a monetary award for unpaid utilities of \$755.98.

I also grant the landlord a monetary award of \$100 for recovery of the filing fee paid for her application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$8,355.98, comprised of unpaid rent of \$7,500 as noted above, unpaid utilities of \$755.98, and recovery of the filing fee of \$100.

Should the tenants fail to pay this amount to the landlords without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord's application for an order of possession for the rental unit, a monetary order for unpaid rent and unpaid utilities and recovery of her filing fee has been granted.

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: June 19, 2020

Residential Tenancy Branch