



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT
 MNRL, MNDCL, OPU, OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- More time to file an Application seeking cancellation of a 10 Day Notice.

I note that section 55 of the Act requires that when a tenant submits an Application 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 section 52 of the Act.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act, seeking:

- An Order of Possession based on the 10 Day Notice;
- An Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice);
- Recovery of unpaid rent and utilities;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, the Landlord, two agents for the Landlord (the Agents), and Legal Counsel for the Landlord. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary Matters

At the outset of the hearing Legal Counsel for the Landlord stated that the Landlord had not received any documentation from the Tenants in relation to this hearing, including a copy of the Tenants' Application and the Notice of Hearing provided to the Tenants by the Residential Tenancy Branch (the Branch).

When asked, the Tenant T.O. stated that they were unaware of receipt of anything from the Branch in relation to their own Application or any requirement for them to serve any documentation regarding their own Application on the Landlord. T.O. stated that although they had originally retained a lawyer who was helping them with all the technical and legal matters related to their Application, the lawyer is no longer assisting them, and they are therefore representing themselves at the hearing.

Branch records indicate that the Notice of Dispute Resolution Proceeding Package containing a copy of the Tenants' Application, the Notice of Hearing, the Respondent Instructions for Dispute Resolution, and the dispute resolution process fact sheet (RTB-114), was email to the Tenants as requested in their Application on November 2, 2021.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

Starting proceedings

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Based on the above and the testimony of the parties in the hearing, I find that the Landlord has not been served with the Tenants' Application or the Tenants' copy of the Notice of Hearing in accordance with the above noted sections of the Act and the Rules of Procedure. Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application or the Notice of Hearing, I find that they did not have a fair opportunity to know the case against them from the Tenants. As a result, I find that it would be administratively unfair and a breach of the Act, the Rules of Procedure, and the principles of natural justice to proceed with the hearing of the Tenants' Application. As the Tenants' Application related to cancellation of a Notice to End Tenancy and the statutory time limit for disputing the Notice to End Tenancy has passed, the Application is dismissed without leave to reapply.

The hearing therefore proceeded based solely on the Landlord's Cross-Application, which the Tenants acknowledged receiving.

Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting orders.

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The parties agree the tenancy will end at 12:00 (noon) on February 15, 2021, and the Tenants agree to vacate the rental property by that date and time.
2. The parties agree that the Tenants owe the Landlord \$8,531.61 for recovery of the filing fee, and unpaid rent and utilities up to and including February 15, 2021.
3. The parties agree that no rent is to be paid by the Tenants in February 2021, as half a month rent for February 2021 is included in the above noted amount owed, for which the Landlord will receive a Monetary Order.
4. The parties agree that despite an indication in the tenancy agreement that a security deposit was required, no security deposit was paid.
5. The rights and obligations of the parties under the Act continue until the tenancy ends in accordance with this agreement.

This settlement agreement was reached in accordance with section 63 of the Act.

Conclusion

I order the parties to comply with the terms of their mutually settled agreement described above.

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord an Order of Possession, effective 12:00 P.M. (Pacific Time) on February 15, 2021. This Order of Possession has been provided to the Landlord in the above terms and must be served on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord a Monetary Order in the amount of **\$8,531.61**. The Landlord is provided with this Order in the above terms and 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.

The Tenants are cautioned that costs of enforcement may be recoverable from them by the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 18, 2021

Residential Tenancy Branch