



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, RP, FFT, OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On November 24, 2020, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 67 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 28, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent based on the Notice, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant L.T. attended the hearing and the Landlord attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Tenant advised that they served the Notice of Hearing and evidence package to the Landlord by courier on December 5, 2020, and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

The Landlord advised that he served each Tenant with a Notice of Hearing and evidence package by registered mail on December 9, 2020, and the Tenant confirmed that they received these packages. Based on this undisputed evidence, and in

accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were sufficiently served the Notice of Hearing and evidence packages. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, the parties were advised that claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the Tenants' other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2019, that rent was established at an amount of \$2,700.00 per month, and that contrary to the tenancy agreement, rent was due on the first day and the 15th day of each month, in the amount of \$1,350.00 for each payment. A security deposit and a pet damage deposit of \$1,350.00 each were paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Notice was served by being posted to the door on November 19, 2020. The Notice indicated that \$1,350.00 was owing for rent on November 15, 2020. The effective end date of the tenancy was noted on this Notice as November 29, 2020.

The Landlord submitted that the Tenants only paid \$1,350.00 for November 2020 rent. Thus, the Notice was served. The Tenants then paid only \$1,350.00 for December 2020 rent, \$1,350.00 for January 2021 rent, and have not paid any rent for February 2021. The Tenants did not have any authorization to withhold any amount of rent from November 2020 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- November 2020 rent: \$1,350.00
- December 2020 rent: \$1,350.00
- January 2021 rent: \$1,350.00
- February 2021 rent: \$2,700.00
- Total rental arrears: **\$6,750.00**

The Tenant advised that they texted the Landlord on November 15, 2020 because their bank's electronic transfer system was down, so she went to the bank and obtained a money order in the amount of \$1,350.00 for the balance of November 2020 rent. She then sent a message to the Landlord about this money order and he told her to keep it. She stated that she expected him to come to the rental unit on November 17, 2020 so she left the money order out for him. However, he did not come to the rental unit that day, so she took the money order inside. She did not inform the Landlord at any point after this that there was a money order waiting for him for the balance of November 2020 rent.

On November 19, 2020, she stated that they received the Notice and an email from the Landlord that he has now decided to accept the late rent, even though he previously told them to keep it. When they received this Notice, they did not make any effort to pay the rent arrears by electronic transfer and they took the money order to the bank to

have it deposited back into their account. She confirmed that they only paid half of December 2020 rent, half of January 2021 rent, and they did not pay any rent for February 2021. She confirmed that they had no authority to withhold any amount of rent for these months, that they arbitrarily withheld it because they were dissatisfied with problems that the Landlord did not correct, and that they believed they could apply the deposits to the arrears.

The Landlord advised that he received a money order from the Tenants in the past and he advised them that it was not his responsibility to pick up rent from them. While he did tell them that he would not be accepting a money order for November rent, he never told them that he was not seeking rent at all for the remainder of November 2020. In fact, he emailed them advising that they could pay the arrears by electronic transfer. However, the Tenants made no efforts to pay these arrears.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants received the Notice on November 19, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Tenants received the Notice on November 19, 2020, they must have paid the rent in full or disputed the Notice by November 24, 2020 at the latest. While the Tenant claimed that the Landlord advised them that the rental arrears for November 2020 was not owed anymore, I do not agree that there is any evidence to support this. In fact, as the Landlord served the Notice, if the Landlord was not seeking this outstanding rent anymore, it is not consistent with common sense and ordinary human experience that he would then serve this Notice. In my view, this is clear evidence that the Landlord was seeking the rental arrears. While the Landlord may have advised the Tenants that he would not be accepting a money order, it is the Tenant's responsibility to pay the rent on time as agreed.

Once the Notice was served, the Tenants had five days to pay this rent to cancel the Notice. While they may have had a money order for this rent, they made no attempts to get this to the Landlord. Furthermore, they made no attempts to electronically transfer the rental arrears to the Landlord. Had they attempted to make payments to the Landlord by money order and/or electronic transfer after they were served the Notice, and had there been evidence that the Landlord refused this payment, then I would likely have been satisfied that the Notice would not be valid as it was the Landlord who was refusing to accept payment for the rent.

While the Tenants disputed the Notice within the five-day time frame, I am not satisfied from the evidence before me that the Landlord was no longer seeking the rent for November 2020, nor am I satisfied that the Tenants had a valid reason under the *Act* for withholding this amount. As they made no attempts to pay the rental arrears after service of the Notice, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy. Furthermore, I am also satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent for December 2020, January 2021, and February 2021.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the

Act, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

I also grant the Landlord a monetary award in the amount of **\$6,750.00** for the outstanding rental arrears.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for November 2020	\$1,350.00
Rental arrears for December 2020	\$1,350.00
Rental arrears for January 2021	\$1,350.00
Rental arrears for February 2021	\$2,700.00
Filing Fee	\$100.00
Total Monetary Award	\$6,850.00

Conclusion

The Tenants' Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply. The rest of their claims are dismissed with leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$6,850.00** 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.

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: February 16, 2021

Residential Tenancy Branch