



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlord: OPC, FFL, OPR, MNRL
Tenants: CNR, CNC, LRE, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

LC appeared for the tenants in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants acknowledged that they were served with the landlord's application for dispute resolution hearing package ("Application"), amendments, and evidence package, which was served by way of registered mail to the tenants. The landlord provided the tracking information in their evidentiary materials. I find that the tenants deemed served with the Application and landlord's evidence package in accordance with sections 88, 89, and 90 of the *Act*.

Both parties confirmed that the tenants were originally served with a 10 Day Notice dated February 2, 2021, and a 1 Month Notice dated January 20, 2021, but the landlord did not include the names of the tenants on the registered mail packages. The landlord testified that she had re-served the tenants with a new 1 Month Notice dated February 16, 2021, and a new 10 Day Notice for Unpaid Rent dated March 2, 2021 by way of registered mail, which included the tenant's names on the packages. The tenant LC confirmed in the hearing that they were served these new Notices to End Tenancy in accordance with sections 88 and 90 of the *Act*. Accordingly, I find the tenants deemed served with the new Notices to End Tenancy 5 days after mailing.

Preliminary Issue - Service of the Tenants' Application for Dispute Resolution

The landlord testified that she had never received the tenants' application for dispute resolution. The tenant testified that the tenants had served their package to the landlord by way of registered mail, but were unable to provide the tracking information for the package.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

As the landlord's testimony is that she was never served with the tenants' application package, and in the absence of the tracking information for the registered mailing, I find that the tenants have not met the requirements to support that they had served the landlord in accordance sections 88 and 89 of the *Act*. The landlord confirmed that she had no issue with me considering an application to cancel the new Notices to End Tenancy served on the tenants. Accordingly, I will consider the tenants' application to cancel the Notices to End tenancy. I dismiss the remainder of the tenants' application with leave to reapply.

Issue(s) to be Decided

Should the landlord's 1 Month and 10 Day Notices be cancelled. If not, is the landlord entitled to an Order of Possession for unpaid rent or cause?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on December 1, 2020, with monthly rent set at \$2,800.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$1,400.00, which the landlord still holds.

The landlord testified that the tenants were served with a 1 Month Notice to End Tenancy on January 20, 2021 for various breaches of the tenancy agreement. The landlord then served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2021 for failing to pay the February 2021 rent. The tenants filed an application disputing both Notices to End Tenancy, stating that the landlord did not include their names on the registered mail packages,

The landlord testified that she had re-served the tenants with a new 1 Month Notice to End Tenancy for Cause dated February 16, 2021, and a new 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2021. It was undisputed by both parties that although the tenants did make some effort to pay the outstanding rent, at the time of the hearing the tenants still owed \$1,400.00 for the March 2021 rent.

The tenant testified in the hearing that they were looking for new housing, but have not been successful. The tenants requested more time to move out, but after a discussion between the parties, no mutual resolution was achieved during the hearing.

The landlord is seeking an Order of Possession, a monetary order for unpaid rent, plus recovery of the filing fee for both the landlord's applications.

Analysis

Although I find that the landlord failed to serve the tenants with the 10 Day Notice dated February 2, 2021, and the 1 Month Notice dated January 20, 21 in accordance with section 88 of the *Act*, I am satisfied that the landlord had served the tenants with a new 10 Day Notice dated March 2, 2021 in accordance with section 88 of the *Act*. I find the tenants deemed served with this 10 Day Notice on March 7, 2021, 5 days after mailing, regardless of whether they chose to accept this package or not.

The tenants did not dispute the fact that they had failed to pay the full rent due within five days of being deemed to have received the 10 Day Notice. Although the tenants did file an application to cancel the Notices to End Tenancy served to them by the landlord, the tenants' application to dispute a 10 Day Notice does not relieve the tenants from their responsibility to pay the outstanding rent, nor do I find that the tenants were in possession of any previous orders that had allowed them to withhold or deduct this rent.. I find that it was undisputed that the tenants did make some effort to pay the outstanding rent, but still owed \$1,400.00 at the time of the hearing for March 2021 rent.

I find that the tenants had failed to pay the outstanding rent as required by the *Act*, and I am dismissing the tenants' application to cancel the 10 Day Notice dated March 2, 2021.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice dated March 2, 2021 to be valid, and complies with section 52 of the *Act*. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

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.

I find it undisputed that the tenants owe \$1,400.00 in unpaid rent for March 2021. I am not satisfied that the tenants had the right to deduct or withhold this amount. Accordingly, I allow the landlord's application to recover this unpaid rent from the tenants.

The landlord is seeking the recovery of the filing fee for the two applications filed by the landlord. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. One of the applications filed by the landlord pertains to the 10 Day Notice to End Tenancy for Unpaid Rent which was not served to the tenants in accordance with the *Act*. The landlord was successful in obtaining an Order of Possession and Monetary Order for Unpaid Rent on the other file. As the landlord was successful with one of the two applications filed, I allow the landlord to recover one of the filing fees paid. I dismiss the landlord's application for recovery of the filing fee on the other file without leave to reapply.

The landlord continues to hold the tenants' security deposit in the amount of \$1,400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim

Conclusion

I dismiss the tenants' application to cancel the 10 Day Notice dated March 2, 2021. I find the 10 Day Notice dated March 2, 2021 to be valid. I therefore grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee paid for one of their applications. I also allow the landlord a monetary order in the amount of \$1,400.00 for the unpaid rent for March 2021.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary awards. I issue a \$100.00 Monetary Order in favour of the landlord for the remaining monetary amount owed. 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.

I dismiss the remainder of the landlord's application without leave to reapply.

I dismiss the remainder of the tenants' application with leave to reapply.

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: March 22, 2021

Residential Tenancy Branch