



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC, OPR-DR, OPRM-DR, FFL

Introduction

The tenants sought to cancel two 10 Day Notices to End Tenancy for Unpaid Rent (the “Notices” or “Notice”) under section 46 of the *Residential Tenancy Act* (“Act”), they sought compensation under section 67 of the Act, and, they sought an order under section 62 of the Act. By way of cross-application the landlord sought an order of possession and a monetary order for unpaid rent, and, for the filing fee.

The landlord attended the hearing on March 11, 2021, which commenced at 11:00 AM. Neither tenant attended the hearing, which ended just after 11:10 AM. No issues of service were raised by the landlord.

Preliminary Issue: Dismissal of Tenants’ Application

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 this hearing the tenants failed to attend to present their case and have therefore failed to prove their claims. Consequently, I dismiss the tenants’ application in its entirety, without leave to reapply.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary for unpaid rent and for the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 1, 2020 and monthly rent, which was due on the first of the month, was \$2,850.00. The tenants paid a security deposit of \$1,425.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

From the very start, the tenants failed to pay rent as required by the tenancy agreement. Included in the landlord's evidence is a copy of an NSF cheque from the tenant for December's rent.

On December 11, 2020, the landlord served the first Notice on the tenants in-person. A copy of the Notice was submitted into evidence. For January 2021, yet another of the tenant's rent cheques was returned NSF to the landlord; a copy of this cheque was in evidence. On January 19, 2021 the landlord served the second Notice on the tenants in-person. A copy of this Notice was also submitted by the landlord into evidence.

The landlord testified that while the tenants eventually paid some rent in February 2021, they are currently in arrears in the amount of \$8,000.00.

Analysis

Section 26 of the Act states that

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.

Section 46(1) of the Act states that

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Further, it should be noted that a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Section 55(1) of the Act states that

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.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the landlord's undisputed evidence persuades me to find that the tenants did not, and have not, paid rent as required by the tenancy agreement. There is no evidence before me to find that the tenants had any legal right under the Act to not pay the rent. Further, having reviewed the Notices, I find that the Notices both comply with section 52 of the Act.

Taking into consideration all the undisputed oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenants did not pay rent in accordance with the tenancy agreement and the Act and I therefore uphold the Notice.

Pursuant to section 55(1) of the Act, I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenants. For the landlord's reference, both this order and the monetary order ought to be served in a manner listed in [section 88](#) of the Act.

In respect of the application for unpaid rent, I find that, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for compensation for rent arrears in the amount of \$8,000.00.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful in his application, I grant his claim for the \$100.00 filing fee.

In summary, I award the landlord a total of \$8,100.00, pursuant to section 67 of the Act.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the \$1,425.00 security deposit in partial satisfaction of the above-noted award. The balance of the award, \$6,675.00, is issued by way of a monetary order.

Conclusion

I dismiss the tenants’ application, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$6,675.00, which must be served on the tenants. If the tenants fail to pay the landlord the amount owed within 15 days of receiving the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 11, 2021

Residential Tenancy Branch