



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord, his agent and translator attended the hearing via conference call and provided affirmed testimony. The tenant B.K.J. (the tenants) attended the hearing via conference call and provided affirmed testimony. The named tenant, D.B.J. did not attend.

At the outset, both parties confirmed that the named tenant, D.B.J. is a minor, but is listed as a tenant on the signed tenancy agreement. The tenant, B.K.J. stated he is in

school. Both parties were advised that he would be noted as being unrepresented for the hearing despite him being a minor as the tenant, B.K.J. was listed as a tenant.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited. The hearing concluded after 78 minutes.

The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 30, 2021. The tenants confirmed receipt of the hearing package but disputed that any evidence was provided with the package.

Extensive discussions took place in which the landlord's agent was assisted by his son, K.C. who acted as a translator for the "Chinese" language. The tenants disputed that no evidence was served with the landlord's hearing package. Arguments from both parties were heard in which the landlord insisted that he had proof of service in the form of a Canada Post Receipt. The tenants again disputed that no evidence was served. The landlord was unable provide any clarification on how the Canada Post Receipt was proof that the Notice of Hearing Package contained the landlord's documentary evidence, other than to state in his direct testimony that the package was submitted to the Residential Tenancy Branch and copied, then sent to the tenant via Canada Post Registered Mail. On this basis, the landlord's documentary evidence was excluded from consideration as the landlord failed to provide sufficient evidence that the submitted documentary evidence documents were served to the tenants via Canada Post Registered Mail on March 30, 2021 in the same package as the Notice of Hearing package served to the tenants.

During the hearing the landlord's agent frequently provided direct testimony in contradiction of his own testimony without the assistance of his translator. The landlord was repeatedly warned to make use of the translator (his son) to avoid any misunderstandings). The tenant, B-L. J. was very argumentative during the hearing and disruptive to the hearing process. The tenants made numerous "comments" disputing the landlord's testimony. The tenants were repeatedly warned to stop interrupting the other party or the Arbitrator and to make notes to her objections and to bring them forth when it was her turn.

The tenants' application was clarified. The tenants besides applying to dispute the 10 Day Notice (CNR) have applied for a monetary claim (MNDC), to suspend or set conditions on the landlord's right to enter the rental unit (LRE), authorization to change

the locks (LAT) and an order for the landlord to comply with the Act, regulations or tenancy agreement (OLC). The tenants have provided written details in which they seek a monetary claim of \$3,000.00 for the loss of quiet enjoyment due to construction; an alleged assault by the landlord; and the loss of quiet enjoyment.

The tenants provided undisputed affirmed evidence that she did not serve the landlord with her notice of hearing package or any documentary evidence. On this basis, the tenants' application is dismissed with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on April 1, 2020 on a fixed term tenancy ending on March 31, 2021 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 26, 2020. The monthly rent is \$1,450.00 payable on the 1st day of each month. A security deposit of \$725.00 was paid.

The landlord stated that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 13, 2021 via Canada Post Registered Mail on March 15, 2021. The tenants confirmed receipt of the 10 Day Notice but was unsure of the date it was received. The landlord stated that the 10 Day Notice shows that the tenants failed to pay rent of \$1,450.00 that was due on March 1, 2021 and provides for an effective end of tenancy date of March 30, 2021.

Both parties confirmed the tenants made a partial rent payment of \$725.00. The tenant provided undisputed affirmed testimony that only a \$725.00 payment was made to the landlord for March 2021 and again for April 2021.

The tenants dispute the landlord's claim arguing that she has suffered a loss of quiet enjoyment due to ongoing construction in the rental unit. The tenants confirmed in her direct testimony that she withheld rent and had only paid \$725.00 for each of the months for March and April 2021.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlord served the tenants with the 10 Day Notice dated March 15, 2021.

The tenants have provided undisputed affirmed testimony that \$725.00 was paid for the monthly rent of \$1,450.00 for March and again for April 2021. The tenants have stated that these payments were made in argument of the ongoing construction and that the tenants have suffered a loss of quiet enjoyment.

Section 26 of the Act states in part that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or part of the rent.

The tenants provided undisputed affirmed testimony that she withheld rent of \$725.00 for each of the two months in dispute of her loss of quiet enjoyment of the rental unit. The tenants stated that they have been living in the rental unit while it is undergoing renovations. On this basis, the tenants are found to have failed to pay the \$1,450.00 rent when it was due on the 1st day of each month. As such, the landlord has established a claim for unpaid rent based upon the 10 Day Notice dated March 13, 2021. The landlord is granted an order of possession for unpaid rent effective 2 days after it is served upon the tenants. As the effective date of the 10 Day Notice of March 30, 2021 has now passed.

On the landlord's monetary claim, I find that the landlord was established a claim for unpaid rent of \$725.00 for the month of March 2021 as per the tenant's undisputed direct testimony. As the tenancy has not concluded as per the effective end of tenancy date of March 30, 2021, I find that the landlord is also entitled to \$725.00 for April 2021. On this basis, the landlord has established a claim for unpaid rent of \$1,450.00.

The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$1,550.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those Courts.

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: May 17, 2021

Residential Tenancy Branch