



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, LRE, OLC, OPR-DR, MNR-DR, FFL

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 landlords requested:

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

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an

opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Preliminary Issue – More time to file application pursuant to section 66

The landlord filed their application using the Direct Request Process however the adjudicator deemed that a participatory hearing was required as the tenants had filed an application to dispute the notice within the required timeline. Both parties advised that they were ready to proceed on this date. An extension of time is not required and therefore that portion of the tenant's application is dismissed. The hearing proceeded on that basis.

Issue(s) to be Decided

Should the 10 Day Notice to End tenancy be cancelled? If not, is the landlord entitled to an order of possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Are the tenants entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order to have the landlord make repairs to the suite or unit?

Are the tenants entitled to an order that limits or suspends the landlords right to enter the suite or unit?

Background and Evidence

The landlord's agent gave the following testimony. The tenancy began on December 1, 2020 with the monthly rent of \$3100.00 due on the first of each month. The tenants paid a security deposit of \$1550.00 which the landlord still holds. The agent testified that the tenants withheld \$1393.32 from the rent due for April 1, 2021 without the landlord's consent. The agent submits that the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 2, 2021.

The tenants have failed to pay that amount along with the rent of \$3100.00 for August 1, 2021. The agent testified that the landlord has also incurred bank fees for the tenant's cheques not clearing for non sufficient funds for the months of February, April and August; $\$48.00 \times 3 = \144.00 . The landlord also seeks the recovery of the filing fee for this application and an order of possession. The agent submits that although the tenants claim to have made numerous repairs, they have not provided receipts or invoices to support those claims, nor did they obtain the landlords consent before doing the alleged repairs.

The landlord seeks the following monetary order along with the order of possession:

Item	Amount
Unpaid Rent April 2021	\$1393.32
Unpaid Rent for August	3100.00
NSF FEE for February, April, August 2021	144.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$4737.32

SR gave the following testimony on behalf of the tenants. SR testified that the unit had many deficiencies from the outset. SR testified that she made numerous requests to have the landlord make repairs for which she was told, "everything is operational and not required". SR testified that she had friends do the repairs for her so she's unable to provide sufficient documentation to support withholding a portion of the rent for April. SR testified that the August rent wasn't paid because the landlord is "making us all crazy" with harassment and showing up at the property unannounced at all times of the day and night.

Analysis

Section 26 of the Act addresses the issue before me 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.*

The tenant did not have the landlords' consent to withhold any rent or an order from the Branch allowing them to do so. I find that the tenants did not pay the rent as required by section 26 of the Act.

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.

Based on all of the above, I find that the landlord is entitled to an order of possession for unpaid rent pursuant to section 55 of the Act. The tenancy is terminated. The tenant's application is dismissed in its entirety without leave to reapply.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, April 12, 2021. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent. Although the landlord has not applied to retain the

security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order as follows:

Item	Amount
Unpaid Rent April 2021	\$1393.32
Unpaid Rent for August	3100.00
NSF FEE for February, April, August 2021	144.00
Recovery of Filing Fee	100.00
Less Deposit	-1550.00
Total Monetary Order Requested	\$3187.32

The landlord is granted an order of possession and a monetary order for \$3187.32. The landlord may retain the security deposit.

The tenant's application is dismissed in its entirety without 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: August 12, 2021

Residential Tenancy Branch