



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL-4M, LAT, LRE

Introduction and Preliminary Matters

On April 12, 2021, the Tenants made an Application for Dispute Resolution seeking 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 to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking authorization to change the locks pursuant to Section 31 of the *Act*.

On May 11, 2021, the Tenants made an additional Application for Dispute Resolution seeking to cancel a Four Month Notice to End Tenancy pursuant to Section 49 of the *Act*.

The Landlord attended the hearing; however, neither Tenant attended the hearing at any point during the 22-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

This hearing was scheduled to commence via teleconference at 11:00 AM on August 16, 2021.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:22 AM. Only the Respondent dialed into the teleconference during this time. I

confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicants did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference was a representative of the Landlord.

As the Applicants did not attend the hearing by 11:22 AM, I find that their Applications for Dispute Resolution have been abandoned. As such, I dismiss the Tenants' Applications for Dispute Resolution without leave to reapply.

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

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?

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.

The Landlord advised that the tenancy started on November 1, 2020 and that the Applicants were co-tenants of the rental unit. Rent was established at a total amount of \$1,300.00 per month and it was due on the first day of each month. A security deposit was not paid. The Landlord never bothered to have a written tenancy agreement completed as required by the *Act*.

She testified that the Notice was served to the Tenants by hand on April 8, 2021. The Notice indicated that \$650.00 was owing and that it was due on April 1, 2021. She advised that the Notice was served because the Tenants did not pay all of rent for April 2021. The effective end date of the tenancy was noted as April 18, 2021 on the Notice.

As well, while not indicated on the Notice, she submitted that the Tenants did not pay \$650.00 for March 2021 rent. Furthermore, she stated that the Tenants were also in arrears for the following:

Rental arrears for May 2021	\$650.00
Rental arrears for June 2021	\$650.00
Rental arrears for July 2021	\$650.00
Rental arrears for August 2021	\$1,300.00

In addition to an Order of Possession, the Landlord is seeking a Monetary Order for unpaid rent in the amount of **\$4,550.00**.

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. As the Applicants are co-tenants, they are jointly and severally liable for paying the full amount of rent each month.

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. 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 were served the Notice on April 8, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities 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 Notice was served on April 8, 2021 by hand, the Tenants must have paid the rent in full or disputed the Notice by April 13, 2021 at the latest. As the undisputed evidence is that the Tenants did not pay any rent owing or dispute the Notice, and as they did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlord’s Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenants have not complied with the *Act*, and as the Tenants’ Applications are dismissed, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenants are in arrears for the rent up until the date of the hearing, I grant the Landlord a monetary award in the amount of **\$4,550.00**.

Pursuant to Sections 55 and 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for March 2021	\$650.00
Rental arrears for April 2021	\$650.00

Rental arrears for May 2021	\$650.00
Rental arrears for June 2021	\$650.00
Rental arrears for July 2021	\$650.00
Rental arrears for August 2021	\$1,300.00
Total Monetary Award	\$4,550.00

Conclusion

The Tenants' Applications are dismissed without 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 **\$4,550.00** 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: August 16, 2021

Residential Tenancy Branch