



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR-DR, MNR-DR, FFL
Tenants: RR, CNR, MNDCT, AAT, RP, PSF, OLC, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- an Order for the landlord to allow access to the unit or site for me and/or my guests, pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 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.

The landlord's agent (the "agent"), the agent's assistant and tenant B.S. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and orders.

Both parties testified that they received the other's application for dispute resolution and evidence. I find that both parties were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the other's application for dispute resolution and evidence.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The landlord's original application claimed unpaid rent in the amount of \$2,500.00. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenants has increased as the tenants have not paid rent from June to October 2021.

Pursuant to section 64 of the *Act* and Rule 2.4, I amend the landlord's application for dispute resolution to include a monetary claim for all outstanding rent in the amount of \$12,500.00.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and the continuation of this tenancy is not sufficiently related to any of the tenants’ other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the 10 Day Notice.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants’ claims with leave to reapply except cancellation of the 10 Day Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 26 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ and agent’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) was posted on the tenants’ door on June 3, 2021. The 10 Day Notice was entered into evidence and states that the tenants failed to pay rent in the amount of \$2,500.00 that was due on June 1, 2021. The 10 Day Notice is dated June 3, 2021. Tenant B.S. testified that he received the 10 Day Notice two days after it was posted. The tenants filed to dispute the 10 Day Notice on June 8, 2021.

The agent testified that the tenants have not paid any rent for the months of June, July, August, September and October 2021. Tenant B.S. testified that he has not paid rent from June to October 2021 because the landlord refused to do required repairs and reduce rent for those repairs. Tenant B.S. testified that if he continued to pay rent, the landlord would not complete the repairs the subject rental property requires.

The agent testified that he and the tenants were unable to agree to a settlement and he told the tenants that the landlord would abide by a decision about repairs and rent reduction made by the Residential Tenancy Branch, but that the tenants had to pay rent in full every month. The agent testified that the tenants refused to pay rent.

Analysis

Section 26(1) 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*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,500.00 on the first day of each month. Based on the testimony of both parties, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlord \$12,500.00 in unpaid rent from June to October 2021.

Pursuant to section 26(1) of the *Act*, the tenants are not entitled to withhold rent from the landlord, even if the landlord has breached the *Act* and failed to properly maintain the subject rental property. If a landlord does not properly maintain a property, tenants can file applications with the Residential Tenancy Branch for an order for the landlord to make repairs and for a rent reduction.

Based on the testimony of both parties I find that the 10 Day Notice was posted on the tenants' door on June 3, 2021 in accordance with section 88 of the *Act*. I find that the tenants received the 10 Day Notice two days later, on June 5, 2021. Upon review of the 10 Day Notice I find that it conforms to the form and content requirements of section 52 of the *Act*.

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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the testimony of both parties I find that the tenants did not pay the overdue rent within five days of receiving the 10 Day Notice and were not otherwise permitted to withhold rent. I therefore dismiss the tenants' application to cancel the 10 Day Notice and I uphold the 10 Day Notice. Pursuant to sections 46 and 55 of the *Act* I find that the landlord is entitled to two-day Order of Possession for nonpayment of rent.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*. As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$1,250.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent June to October 2021	\$12,500.00
Filing Fee	\$100.00
Less security deposit	\$1,250.00
TOTAL	\$11,350.00

The landlord is provided with this Order 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: October 05, 2021

Residential Tenancy Branch