



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT / OPR/MNRL/FFL

Introduction

On July 30, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, to request an order for the Landlord to comply with the Act, and to be compensated for the filing fee.

On August 26, 2021, the Landlord submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlord requested an Order of Possession for the rental unit, a Monetary Order to recover unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me and had no concerns regarding service. As such, I find that the evidence, in relation to the issues to be decided, is admissible for this hearing.

Preliminary Matter- Issues

I determined that the issue related to the Tenants’ request to order the Landlord to comply with the Act was not related to the main issues in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

Preliminary Matter – Settlement attempt

Section 63 of the Act allows an arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent, dated July 21, 2021 (the “10 Day Notice”), be cancelled, in accordance with section 46 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 15, 2014, was renewed after one year, and then continued as a month-to-month tenancy. The rent was \$2,425.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,150.00.

The Landlord submitted documentary evidence and provided testimony that the Tenants began failing to pay the monthly rent in full in May 2020 and have continued to do so to present. The Landlord stated that the Tenants have an outstanding amount of rent owing, in the amount of \$20,275.00.

The Landlord testified that he served the 10 Day Notice, via registered mail, to the Tenants. The effective move-out date on the notice was August 6, 2021.

The Landlord also submitted a copy of a second 10 Day Notice to End Tenancy for Unpaid Rent, dated August 11, 2021, that he sent to the Tenants, via registered mail. The effective move-out date on the notice was August 27, 2021.

The Landlord testified that the Tenants had only been paying \$1,500.00 towards their monthly rent and that each month, they became \$925.00 further into arrears.

The Landlord requested an Order of Possession for the rental unit and a Monetary Order in the amount of the outstanding rent.

The Tenants stated that they have been doing what they could and acknowledged that they haven't been able to pay the rent in full since the spring of 2020 when COVID became prevalent.

The Tenants acknowledged that they received the 10 Day Notice to End Tenancy for Unpaid Rent, dated July 21, 2021, on July 27, 2021. The Tenants stated that they did not pay the full months rent and applied for dispute resolution.

Analysis

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.

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

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenants did not pay rent when it was due and are in arrears for the amount claimed. I note that there is no evidence before me that the Tenants had a right under the Act to not pay the rent.

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 their claim for compensation in the amount of \$20,275.00.

Section 46 of the Act authorizes a landlord to 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. Based on undisputed evidence from the Tenants, I find that the Tenants received the 10 Day Notice on July 27, 2021 and continued to occupy the rental unit without paying rent.

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 or I find that the 10 Day Notice is valid and compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

Based on the testimony of the Tenants and the Landlord, I find the 10 Day Notice, dated July 21, 2021, is valid and complies with the requirements set out in Section 52.

As I have found that the 10 Day Notice is valid and complies with the Act, I dismiss the Tenants' Application without leave to reapply. For these reasons and because the Tenants are still occupying the rental unit, I grant the Landlord an Order of Possession.

I find that the Landlord's Application has merit, and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit in the amount of \$1,150.00, in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent: May 2020-November 2021	\$20,275.00
Recovery of Filing Fee for this Application	100.00
Less Security Deposit	-1,150.00
Total Monetary Order	\$19,225.00

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$19,225.00.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$19,225.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: November 30, 2021

Residential Tenancy Branch