



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;

The tenants attended. PK attended and stated he was the agent of the landlord (“the landlord”). All persons attending had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Recording

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision will be sent. The tenants confirmed their mailing address.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties submitted considerable disputed testimony in a lengthy hearing. Only key, relevant and admissible facts are referenced.

The landlord testified as follows. The owner of the building in which the unit is located is VM ("the owner") who did not attend the hearing. The owner and her family live upstairs and the tenants occupy the basement suite.

The parties agreed there is no written tenancy agreement and the tenants moved in mid-September 2021. Rent is \$1,000.00 monthly. There was disagreement on when the rent is payable. The tenants asserted that the rent is payable at the end of the month as they are both in receipt of disability income due at that time. The landlord stated the due date is mid-month.

The tenants testified that they paid \$500.00 cash for rent when they moved in. Neither party submitted any evidence of payment.

The landlord claimed that no rent has been paid throughout the tenancy.

The tenants testified as follows. They have offered cash to the owner for rent since the initial payment as well as a security deposit. The owner refused to accept the money and told them to move out. The tenants have asked the owner to sign forms required by the government for rental subsidies/assistance and the owner has refused.

The landlord denied the tenants have attempted to pay rent. The landlord denied refusal of the owner to sign any documents to assist the tenants to obtain rental subsidies/assistance.

The tenants testified as follows. The owner, her husband and son, assaulted the tenant SH, severely beating him with a 2 x 4 resulting in medical treatment. The owner has turned off the power, broken a window in the unit requiring repairs, and damaged the front door. The power is currently connected. The tenants have called the police but the

owner's harassment of them continues. They expressed bewilderment at the owner's actions.

The landlord denied any claims of assault. The landlord said the tenants themselves are responsible for any claimed damages.

The parties agreed the landlord issued a 10 Day Notice in the standard RTB form dated November 18, 2021 and posted to the tenants' door that day thereby effecting service three days later on November 21, 2021. The tenants filed an Application for Dispute Resolution on December 6, 2021. The landlord submitted a signed and witnessed Proof of Service form.

The 10 Day Notice states that the tenants have five days to pay the rent or file the Application for Dispute Resolution. The tenants testified that they attempted to pay the rent in this period and the owner refused to accept the rent. The tenants submitted no evidence of their attempts to pay rent.

The tenants testified as follows. They were promised internet by the owner and it was never installed; they therefore have no means to transfer the rent. They were unaware of how else to pay their rent. They have never met the agent, do not know how to reach him, and did not know anyone acted for the owner. They cannot find alternative affordable accommodation otherwise they would move out. They have limited mobility and have no car. They have no advocate or social worker. They want help to pay the rent as they are required to do and obtain repairs.

The landlord submitted a Monetary Order Worksheet stating that \$2,500.00 is owing in rent from September 15, 2021 to December 14, 2021. The landlord did not submit copies of receipts or a tenant ledger.

The landlord stated the tenants have made no effort to pay rent. The landlord acknowledged he does not live in the house and has had little contact with the tenants.

Analysis

I have reviewed all documentary evidence and testimony.

The landlord claimed that the tenants did not pay the outstanding rent within the five-day period after service of the Ten-Day Notice. The landlord requested an Order of Possession pursuant to section 46(5) as the tenants are conclusively presumed to have

accepted the tenancy ends on the effective date of the Notice requiring them to vacate the rental unit by that date.

However, I find the tenants' testimony to be credible and to inject doubt into the landlord's version of events. They claimed they want to pay rent, offered cash to the owner, which was refused, and were unaware of how else to pay their rent. They said they were promised internet by the owner and it was never installed; they therefore have no means to transfer the rent. They have no advocate or social worker. They testified they cannot find alternative affordable accommodation. They said they had asked for help from the RTB and the landlord in completing the forms necessary to apply for rental support without positive results; the forms have never been filled in or submitted. They claimed to have been assaulted by the owner and her family who have damaged the unit. They asked for directions from the RTB on how to obtain repairs. I find the tenants' testimony that has a ring of truth.

In turn, the landlord denied the tenants' claims while acknowledging that he was retained by the owner to get them out. The landlord acknowledged he was not at the unit often and had never given the tenants his name or telephone number.

I find the landlord has failed to submit supporting evidence such as receipts, a ledger, or reliable statement of the terms of the tenancy. I find the landlord has failed to meet the burden of proof that the tenants have not paid the rent or made efforts to do so within the five-day period following service of the 10 Day Notice. I therefore cannot determine what rent, if any, is owing.

I therefore dismiss the landlord's claim with leave to reapply.

As I am concerned with the tenants' health, care and safety, I direct the landlord to immediately provide a copy of this Decision and Order to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374

Conclusion

I dismiss the landlord's claim with 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: January 06, 2022

Residential Tenancy Branch