



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, FFT, OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On September 7, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an emergency repair Order pursuant to 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 5, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

R.O. attended the hearing claiming that she was the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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.

The Landlord advised that his agent found Tenant O.A. before the tenancy commenced and he met with this person on January 14, 2020 to sign the tenancy agreement. He stated that he never looked at this person's identification and he assumed that the name listed on the tenancy agreement was this person's actual name. The Landlord was vague, he appeared to know little of the details of this tenancy, and he placed blame for his unawareness on his agent.

R.O. advised that O.A. is her son, that he brought her the tenancy agreement on January 14, 2020, that she signed it, and then O.A. returned it to the Landlord. She claimed that she is the Tenant and that she has been paying rent every month by leaving cash or a cheque in the Landlord's mailbox.

The Landlord refuted this and claimed that the tenancy agreement was signed by O.A. on January 14, 2020 in front of him, and he has no idea what O.A.'s real name is. He stated that O.A. provided him with 12 fake cheques at the start of the tenancy that could not be deposited. He stated that he was then given a bank draft each month for rent; however, there was no name on these drafts. He submitted that in the winter of 2020, he asked O.A. for e-transfers for rent, but stated that O.A. could not do this. As a result, rent was direct deposited into his account each month, but he was not sure who did this.

R.O. then changed her testimony and advised that rent was paid by direct deposit.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Regarding the names on the tenancy agreement, it appears as if the Landlord did not do any due diligence to determine the actual name of who he was renting to. While he claims that he was not sure if O.A.'s name was noted correctly on the tenancy agreement and that he did not know who R.O. was, I find that I am doubtful of the reliability of the Landlord's testimony as he submitted a demand letter as documentary evidence addressed directly to O.A. I find that this supports the conclusion that the Landlord knew that O.A. and R.O. were separate individuals. This discrepancy causes me to doubt the credibility of the Landlord's submissions.

Furthermore, when service of documents was discussed, the Landlord claimed not to have received any emails from anyone other than O.A. However, in his own documentary evidence, he provided screenshots of emails sent by someone with the same last name as R.O. I find that this discrepancy adds weight to the conclusions that for whatever reason, the Landlord was being untruthful during the hearing. As well, this was consistent with the vague and evasive manner with which he provided submissions. Consequently, I find the Landlord's credibility to be lacking and suspect.

In addition, I found R.O.'s varying and contradictory testimony also to be dubious. I do not find that she provided logical testimony that was consistent with documentary evidence. As such, I found her credibility to be lacking and suspect as well.

Ultimately, based on the totality of the testimony before me, I find it more likely than not that O.A. and R.O. were two separate individuals, despite being noted as one person on the tenancy agreement. I am also satisfied that the Landlord was likely aware of this at some point, if not at the start of the tenancy. As such, I am satisfied that these two people are separate individuals, but are co-tenants to this tenancy. Consequently, and as confirmed by the Landlord, the Style of Cause on the first page of this Decision has been amended to reflect the two different individuals.

With respect to service of the respective Notice of Hearing packages, I am satisfied that both parties received these packages. Regarding service of evidence, both parties were vague and could not provide consistent or reliable testimony with respect to serving and receiving documents. As both parties seemed to reference materials that were served on time, I have accepted the parties' evidence that was submitted in accordance with the timeframe requirements of the Rules of Procedure. Only this evidence will be considered. Any late evidence submitted will be excluded and will not be considered when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

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

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on February 1, 2020, that the rent was currently established at an amount of \$4,600.00 per month, and that it was due on the first day of each month. A security deposit of \$2,300.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on September 2, 2021 and R.O. confirmed that she received all three pages of the Notice. The Landlord testified that \$4,600.00 was owing for rent on September 1, 2021 and that the Tenants did not pay this rent. Thus, the Notice was served. He submitted that the Tenants have not paid any rent for October, November, and December 2021 or for January 2022. Therefore, in addition to an Order of Possession, the Landlord is also seeking a Monetary Order in the amount of

\$23,000.00 for rental arrears. The effective end date of the tenancy was noted on the Notice as September 12, 2021.

R.O. confirmed that despite the Notice appearing to be addressed to one individual, she understood that there were actually two separate names on the Notice. She acknowledged and accepted that this Notice was directed to her as well. She confirmed that rent was not paid for September 2021 and that no rent had been paid to the Landlord since. She stated that this was due to the Landlord refusing to complete repairs. She claimed that the pool was toxic because of a lack of maintenance and that water was dripping, from pipes associated with the pool, into the basement. She submitted that she made multiple calls to the Landlord in March or April 2021 and he refused to fix the pool issue, so she hired a company in June 2021 to fix this problem. This repair cost approximately \$1,500.00.

The Landlord advised that the pool issue was not an emergency as the condition of the pool was due to the Tenants' negligence. He submitted that the Tenants moved people into the pool maintenance room to live and they shut off the pump because of the noise it made. As a result, the cleanliness of the pool was affected. Moreover, the Tenants threw property and debris into the pool and he noted that a maintenance company refused to service the pool anymore because of the Tenants' blatant negligence. He referenced documentary submitted to support this position.

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. 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 33 of the *Act* outlines what would be considered an emergency repair. Furthermore, the Tenants would be entitled to deduct an amount from their rent for the cost to fix an issue provided that this issue fell under the definition of an emergency repair, and as long as the Tenants then followed the requirements of the *Act*.

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. As noted above, as I am satisfied that R.O. accepted that the Notice was also directed to her, and as she confirmed that she received all pages of the Notice, I find it appropriate to amend the Notice, in accordance with Section 68 of the *Act*, to reflect that the Notice was addressed to the two separate co-tenants.

The undisputed evidence before me is that the Tenants were served the Notice on September 2, 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 September 2, 2021, the Tenants must have paid the rent in full or disputed the Notice by September 7, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by September 7, 2021 to cancel the Notice.

While they disputed this Notice, I do not find that R.O. has sufficiently substantiated that what she described as an emergency repair would fall into one of the grounds listed under Section 33 of the *Act*. Moreover, I am suspicious that this issue was possibly caused as a result of the Tenants' negligence. Regardless, even if I were to accept that this was an emergency repair under the *Act*, this issue cost approximately \$1,500.00 to fix and the rent was \$4,600.00 per month. There is no evidence before me that the Tenants made any attempts to pay the difference in rent that was owed. In addition, R.O. admitted that no rent has been paid since September 2021 either, because it was her belief that the Landlord would not make repairs and that the Landlord illegally entered the rental unit at some point.

When reviewing the totality of the evidence before me, it is evident that the Tenants were unhappy with some issues during the tenancy, and it was their mistaken belief that they could simply and arbitrarily withhold the rent as a means to address these issues. Given that I am not satisfied that the Tenants had any authority under the *Act* to withhold the rent, I find that the Tenants did not have a valid reason under the *Act* to do so. Consequently, I am satisfied that they 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*, and as the Tenants have not complied with the *Act*, 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.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears for September, October, November, and December 2021, and January 2022. As such, I grant the Landlord a monetary award in the amount of **\$23,000.00**.

Regarding the Landlord's claim for unpaid utilities and damages to the rental unit, these claims have been dismissed with leave to reapply. With respect to the Landlord's claim for a filing fee from an Application that he withdrew, this has been dismissed without leave to reapply.

As the Tenants were not successful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee.

As the Landlord was partially successful in his Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for September 2021	\$4,600.00
Rental arrears for October 2021	\$4,600.00

Rental arrears for November 2021	\$4,600.00
Rental arrears for December 2021	\$4,600.00
Rental arrears for January 2022	\$4,600.00
Filing Fee	\$100.00
Total Monetary Award	\$23,100.00

Conclusion

The Tenants' Application for Dispute Resolution is 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 **\$23,100.00** 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: January 19, 2022

Residential Tenancy Branch