



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On December 15, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on 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 a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords and both Tenants attended the hearing. 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.

Landlord Z.M. advised that a Notice of Hearing and evidence package was served each Tenant by registered mail on or around January 25, 2021, and the Tenants confirmed receiving these packages. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages. As such, I have accepted the Landlords’ evidence and will consider it when rendering this Decision.

Tenant L.H. advised that she served their evidence to the Landlords at the address they provided for service. This address was a doctor’s office. She stated that she served the Landlords’ secretary by hand on February 10, 2022 and that she saw Z.M. come out of his office to observe this exchange. Tenant B.H. advised that he witnessed L.H. go into the office with their evidence and then come out of the office without any evidence. L.H. confirmed that she did not serve their digital evidence.

Z.M. confirmed that the address they used for service was their business office; however, he claimed that he does not have a secretary, due to COVID, and that he did not receive the Tenants' documentary evidence. When weighing these submissions before me, I prefer the Tenants' version. As such, I am satisfied that the Landlords were, more likely than not, served the Tenants' evidence. Consequently, I have accepted the Tenants' documentary evidence and will consider it when rendering this Decision.

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.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords 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 August 1, 2021, that the rent was established at an amount of \$3,300.00 per month, and that it was due on the first day of each month. A security deposit of \$1,650.00 and a pet damage deposit of \$1,650.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Z.M. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on December 5, 2021 by being posted to the Tenants' door. He testified that rent was initially reduced to \$3,200.00 per month as the Tenants were required to do monthly maintenance to the rental unit. He submitted that this rent reduction continued despite the Landlords agreeing that this no longer was required to be completed by the Tenants.

He stated that the Tenants were given a 10% rent reduction of September, October, and November 2021 rent, but full rent of \$3,200.00 was owed as of December 1, 2021 based on text agreements with the Tenants. As the Tenants did not pay any rent on December 1, 2021, the Notice was served. He advised that the Tenants paid all of

December 2021 rent and all of January 2022 rent on December 22, 2021. The Tenants were then given a receipt for use and occupancy only. He stated that the Tenants paid \$3,000.00 on January 31, 2022 and \$200.00 on February 1, 2022 for February 2022 rent, but the Tenants were given another receipt for use and occupancy only. While the Tenants are not currently in arrears for any rent, the Landlords are still seeking an Order of Possession because the Tenants did not pay rent as required to cancel the Notice.

L.H. advised of construction related issues in the rental unit that were disruptive to their quiet enjoyment of the rental unit. They concurred that their rent was reduced to \$3,200.00 per month. B.H. advised that they were then given a further rent reduction of 10% off of the rent, but this was only for the months of October and November 2021. He disputes that the rent reductions ceased after November 2021. He testified that he informed the Landlords at the beginning of December 2021 that rent would be late due to bank issues, and he confirmed that they did not pay any rent until December 22, 2021. He also confirmed that they received receipts for rent payments for use and occupancy only. He acknowledged that they did not have any grounds under the *Act* to withhold the rent legally.

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 Landlords comply 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 Landlords 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 Landlords must be signed and dated by the Landlords, 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 confirmed that they received the Notice on December 5, 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 received on December 5, 2021, the Tenants must have paid the rent in full or disputed the Notice by December 10, 2021 at the latest. However, the undisputed evidence is that the Tenants did not pay the rent in full to cancel the Notice, nor did they dispute it. The Tenants were provided with the five situations where they would be permitted to withhold the rent under the *Act*:

1. The Tenants have an Arbitrator's Decision allowing the deduction.
2. The Landlords illegally increased the rent.
3. The Landlords had overcharged for a security or pet damage deposit.
4. The Landlords refused the Tenants' written request for reimbursement of emergency repairs.
5. The Tenants had the Landlords' written permission allowing a rent reduction.

The Tenants confirmed that none of the aforementioned reasons, that permitted them to withhold December 2021 rent, applied to their situation. As the Tenants did not pay the rent in full or dispute the Notice by December 10, 2021, I am satisfied that the Tenants have been conclusively presumed to have accepted the Notice. As there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

While B.H. claimed that it was their belief that they were still entitled to a rent reduction in December 2021, I note that they did not pay any amount of rent that they believed was owed after being served the Notice. In fact, they only advised the Landlords that rent would be late. Moreover, they eventually paid the full amount of rent of \$3,200.00 on December 22, 2021 for December 2021 rent. I find that all of this leads to the reasonable conclusion that the Tenants were, more likely than not, of the mind that rent was due in full again starting December 1, 2022.

As the Landlords' 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 Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As the Landlords have issued receipts for use and occupancy only, I do not find that the tenancy has been reinstated. However, as the rent has been paid for February 2022, I grant an Order of Possession takes effect at **1:00 PM on February 28, 2022 after service of this Order** on the Tenants.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of

the *Act*, I allow the Landlords to retain a portion of the security deposit in satisfaction of this debt.

Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective at **1:00 PM on February 28, 2022 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.

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: February 17, 2022

Residential Tenancy Branch