



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Real Property Management Executives
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenants, V.G. and J.A.	910059821	CNR-MT, FFT
Landlord's Agent, S.P.	210060030 and 210060120	OPR-DR, MNR-DR, FFL OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied for:

- Orders cancelling two 10 Day Notices to End Tenancy for Unpaid Rent dated January 5, 2022 (for December rent and January rent, respectively ("10 Day Notices");
- more time to apply to cancel the 10 Day Notices; and
- recovery of their \$100.00 application filing fee.

The Landlord applied for the:

- an Order of possession for unpaid rent, further to having served the Tenants with the 10 Day Notices;
- a request for a monetary order of \$700.00 for outstanding unpaid rent from the Tenants; and
- recovery of the \$100.00 application filing fee.

The Tenants, V.G. and J.A., and an agent for the Landlord, S.P. ("Agent") appeared

at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I considered service of the Parties’ Notices of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each Respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served each of the Tenants with the Landlord’s Notice of Hearing documents by registered mail on January 27, 2022. The Agent provided Canada Post tracking numbers as evidence of service. The Agent said he served the Landlord’s supporting evidence to the Tenants by attaching it to the rental unit door on March 29, 2022. The Agent submitted a proof of service form for these documents, which indicated that his witness, A.P., watched the Agent attach them to the rental unit door. The Tenants confirmed that they had received these documents and had reviewed them. I find that the Tenants were deemed served with the Landlord’s Notice of Hearing documents and evidence in accordance with the Act.

The Tenants submitted evidence to the RTB to support their Application; however, they acknowledged having failed to serve the Landlord with anything, other than the Notice of Hearing documents. Accordingly, pursuant to rules of administrative fairness, as set out in the Rules, I cannot consider the Tenant’s evidence, since they did not provide copies of this to the Landlord in advance of the hearing, as required by the Rules.

Issue(s) to be Decided

- Should the Tenants be granted more time to apply to cancel the 10 Day Notice?
- Should the 10 Day Notices be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on April 1, 2021, with a monthly rent of

\$1,900.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$900.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenants' security deposit in full. The Tenants said that they moved out on March 14, 2022, although, they acknowledged that they did not give the Landlord any notice of this end to the tenancy, nor their forwarding address in writing. The Agent said the Landlord still seeks an Order of Possession for the file.

The Parties agreed that the Landlord served the Tenants with two 10 Day Notices that were both signed and dated January 5, 2022. They both have the rental unit address, they were served by attaching copies to the rental unit door on January 5, 2022, with an effective vacancy date of January 15, 2022, which is automatically corrected by the Act to January 18, 2022. The 10 Day Notices were served on the grounds that the Tenants failed to pay the Landlord \$1,900.00 in rent that was owing on December 1, 2021, and January 1, 2022, respectively.

The Tenants applied to cancel the 10 Day Notice on January 11, 2022. They noted having received the 10 Day Notices on January 5, 2022; therefore, pursuant to section 46 (4), the Tenants had until January 10, 2022, to apply to cancel the 10 Day Notices (or pay their rent in full). In the hearing, the Tenants said that they were a day late applying, because they thought they had to apply in person at a government service office. They said that they worked until after the office was closed, until January 11, 2022, when they applied.

The Tenants request to have this deadline extended, pursuant to section 66 of the Act, which states that the Director may extend a time limit established by this Act only in exceptional circumstances. However, given that the Tenants could have applied online, rather than by attending a government service office, I find that their reason for being late is not exceptional in the circumstances. As such, I decline to grant the Tenants more time to apply to dispute the 10 Day Notices. I, therefore, find that the Tenants have not applied to dispute the 10 Day Notices, nor have they paid their outstanding rent. Accordingly, **I dismiss the Tenants' Application wholly** without leave to reapply, pursuant to section 62 of the Act.

The Agent set out the Landlord's monetary claim, as follows:

Date Rent Due	Amount Owning	Amount Received	Amount Owning
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Dec 1/21	\$1,900.00	\$1,150.00	\$750.00
Jan - late fee	\$25.00	\$0.00	\$25.00
March 1/22	\$1,900.00	\$0.00	\$1,900.00
Apr 1/22	\$1,900.00	\$0.00	\$1,900.00
Apr - NSF	\$25.00	\$0.00	\$25.00
Apr – late fee	\$25.00	\$0.00	\$25.00
RTB filing fee	\$100.00	\$0.00	\$100.00
Reg'ed mail	\$31.60	\$0.00	\$31.60
	TOTAL		\$4,756.60

The Agent said that the missing and the late rent affected the owner's ability to pay their mortgage, and their personal finances, generally.

In the hearing, the Tenants said:

Yes, they are accurate. We couldn't pay because we were sick from the black mould. They wouldn't clean it, because we couldn't find anywhere else to live. It cost \$1,000.00... we've put hundreds of dollars into this place. We're trying to keep up to everything that was in our tenancy agreement. [R.] said if we were putting money into the house, he would pay us or we could take it out of rent. We suffered from financial hardship.

We've been trying to work and keep ourselves afloat. We can barely afford to feed ourselves. Any money is gone to pay our rent . We no longer live at that property, so we shouldn't have to pay for rent for April 2022, because we were here for a bit of March, but for April we weren't. We should have communicated that, but we didn't realize we had to. We just thought we had no option that we had to be out for first of April.

The Agent replied:

In regards to the claims for repairs and monies they put in, none of this was agreed with by the current owner. Nothing was given to us – proof to us, the previous ownership didn't confirm any of these details to us. There is no

evidence to show these claims have ground. To withhold rent due to maintenance is not authorized without an order.

As for vacating the property. We did not receive any form of communication, even though I sent [V.G.] an email last week re the rent. Since proper notice was not given, they are still legally bound to pay for April's rent.

The Tenant's responded:

We never intended to not pay rent; we have just suffered financial hardship. Also, the power bill has been outrageous.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to deduct any portion of their rent from the monthly rent due to the Landlord.

Further, section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a 10 Day Notice to pay the overdue rent or dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenants received the 10 Day Notices on January 5, 2022. Accordingly, and pursuant to section 46 (4) of the Act, they had until January 10, 2022, to dispute the 10 Day Notice by applying for dispute resolution, or to pay the outstanding rent in full. However, they applied on January 11, 2022; therefore, I find that the Tenants did not dispute the 10 Day Notices, nor did they pay their outstanding rent owing in full.

Date Rent Due	Amt Owing	Amt Received	Amt. Owing
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Dec 1/21	\$1,900.00	\$1,150.00	\$750.00
Jan — late fee	\$25.00	\$0.00	\$25.00
March 1/22	\$1,900.00	\$0.00	\$1,900.00
Apr 1/22	\$1,900.00	\$0.00	\$1,900.00
Apr — NSF	\$25.00	\$0.00	\$25.00
Apr — late fee	\$25.00	\$0.00	\$25.00
RTB Filing Fee	\$100.00	\$0.00	\$100.00
Reg'ed mail	\$31.60	\$0.00	\$31.60
	TOTAL		\$4,650.00

I find that the Tenants have not paid their overdue rent, and that rent arrears in the amount of **\$4,550.00** remains outstanding.

In terms of the Landlord's late rent fee and bank charges, the *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

In terms of the fees for late payment and insufficient bank funds, I find that the Landlord did not point out a clause in the tenancy agreement that provides for these fees. I also examined the tenancy agreement and could not find such a clause. Therefore, and pursuant to section 7 (2) of the Act, I find that the Landlord is not allowed to charge such fees, and as such, I dismiss the claim for these fees without leave to reapply.

Further, the Agent did not direct me to any authority in the Act, Regulation or Policy Guidelines that allows for recovery of a registered mail fee incurred in the dispute resolution process. As such, I dismiss this claim without leave to reapply.

I, therefore, award the Landlord with **\$4,550.00** from the Tenants in unpaid rent pursuant to sections 26 and 67 of the Act. I also award the Landlord with recovery of their \$100.00 application filing fee pursuant to section 72 of the Act. However, I decline to award the Landlord with recovery of both application filing fees, because the Landlord could have applied to amend their first application, rather than making two separate applications. As such, the second \$100.00 application filing fee is dismissed without leave to reapply.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' \$900.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenants' **\$900.00** security deposit. I grant the Landlord a **Monetary Order** of **\$3,750.00** for the remaining amount of the monetary awards owed by the Tenants to the Landlord, pursuant to sections 26 and 67 of the Act.

As rent has not been paid when due, I find further that the Landlord is entitled to an order of possession. I, therefore, grant the Landlord an **Order of Possession** of the rental unit, and since the effective vacancy date on the 10 Day Notice has passed, the Order of Possession will be **effective two days after it is deemed served** on the Tenants, pursuant to section 55 of the Act.

Conclusion

The Tenants are unsuccessful in their application to cancel the 10 Day Notice, as they applied for dispute resolution late, and therefore, they are conclusively presumed by section 46 (5) of the Act to have accepted that the tenancy ends on the effective date of the 10 Day Notice. Further, the Tenants acknowledged the unpaid rent they owe the Landlord. The Tenants' application is dismissed wholly, without leave to reapply.

The Landlord is successful in their application for an order of possession of the rental unit, and for a monetary order for recovery of unpaid rent. The Landlord has been awarded \$4,550.00 for unpaid rent. Further the Landlord is awarded recovery of their \$100.00 application filing fee for the first application. The Landlord is authorized to retain the Tenants' \$900.00 security deposit in partial satisfaction of these awards.

Pursuant to section 67 of the Act, I grant the Landlord a **Monetary Order** of **\$3,750.00**. 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.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms.

This Order must be served on the Tenants by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 12, 2022

Residential Tenancy Branch