



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT, MNDCT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for compensation for a monetary loss pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, KP and JP, and the Tenant, XS, and Advocate, KS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenant with the 10 Day Notice on January 2, 2022 by email. The Tenant confirms receipt of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on January 5, 2022 according to Sections 43(1) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

The Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package for this hearing on January 19, 2022 by Canada Post registered

mail (the “NoDRP package”). The Tenant referred me to the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Landlords were served with the NoDRP package five days after mailing them on January 24, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant testified that she served the Landlords with her evidence on March 14, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Landlords were served with the Tenant’s evidence five days after mailing them on March 19, 2022, in accordance with Sections 88(c) and 90(a) of the Act.

Preliminary Matter

Amendment of Tenant’s Application

I note the Tenant amended her application to change her mailing address and include a monetary award for a return of the security deposit. Rules of Procedure 4.1 Amending an Application for Dispute Resolution notes, “As stated in Rule 2.3 [*Related Issues*], unrelated claims contained in an application may be dismissed with or without leave to re-apply.”

As the Tenant’s original application is related to the cancelation of the 10 Day Notice, I find it would be pre-emptive to consider a return of a security deposit if one of the main purposes is to cancel a notice to end tenancy and is therefore unrelated to the original claim. I decline to consider this portion of the Tenant’s amendment, and this part of the Tenant’s claim is dismissed with leave to re-apply. The Tenant’s address will be updated as requested.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s 10 Day Notice?
2. If the Tenant is not successful, are the Landlords entitled to an Order of Possession or a Monetary Order?
3. Is the Tenant entitled to an Order for compensation for a monetary loss?
4. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on December 1, 2014. Monthly rent is \$982.19 payable on the first day of each month. A security deposit of \$450.00 was collected at the start of the tenancy and is still held by the Landlords.

The reason in the 10 Day Notice why the Landlords were ending the tenancy was because the Tenant owed \$981.19 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 15, 2022.

The Landlords testified that they had a conversation with the Tenant that their long term plan was to have their daughter move into the rental unit in about 6 months. The Landlords discussed the options or process of ending a tenancy for landlord's use and the requirement of providing one free month of rent as compensation. The Landlords never served an #RTB-32 Two Month Notice to End Tenancy For Landlord's Use of Property on the Tenant.

The Tenant served a '10 Day Notice to Move Out Early' on the Landlords on December 21, 2021. The Tenant claims that the Landlords issued a Landlord's Use eviction notice on her and she is relying on Section 50 of the Act for giving her 10 Day Notice. The Tenant specified January 31, 2022 as her last day in the rental unit and she stated *"January is the month for which rent is not due since Section 51 of the RTA requires you to pay me one-month rent as compensation for the last month of my notice. Rather than paying you and you reimbursing me for the month of compensation, no rent will be paid for January 2022."*

The Tenant stated that the Landlords are aware of her mobility issues and on December 5, 2021 she reported to the Landlords that the elevator was not working. The Tenant stated 'she was trapped' downstairs. The Tenant testified that she called the strata management company on December 7, 2021 to advise about the elevator outage. The property manager assigned to the building told the Tenant they were not advised the elevator was not operational. The elevator was repaired the next day.

The Landlords said the Tenant reported the elevator outage on a Sunday and they were going to report it to the property manager on Monday. The Landlords inadvertently did not report the elevator outage to the strata property management company. The Landlords maintained though that the Tenant was not trapped, as on the day she reported the elevator outage the Tenant was in the process of cleaning out her storage room, and texted the Landlords that she '*had to walk up from the ground to my place and down and up again carrying walker. Trying to clean put storage room in prep for move. Clean out*'.

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. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

When a Landlord is wanting to end a tenancy, notice of the termination must be in writing and in the approved form. Section 52 of the Act sets out the analysis of form and content that must be undertaken. It states:

Form and content of notice to end tenancy

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form. (emphasis mine)*

Just a conversation about ending a tenancy is not a sufficient process for ending a tenancy. The Landlords were thinking out loud when they discussed with the Tenant

their daughter moving into the rental unit. Certainly if this was what they wanted to do, they would have had to issue the Tenant a Two Month Notice to End Tenancy for Landlord's Use form. Both parties confirmed that the Landlord never issued a formal notice to end tenancy for Landlord's use. I find the Landlords never issued a Two Month Notice to End Tenancy for Landlord's Use on the Tenant. I find the Tenant issued the Landlords a Tenant's notice to end tenancy on December 21, 2021 pursuant to Section 45(1) of the Act. Rent was still owing for the month of January 2022.

Rules about payment and non-payment of rent

- 26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

Landlord's notice: non-payment of rent

- 46** (1) *A landlord may 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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) *pay the overdue rent, in which case the notice has no effect, or*
- (b) *dispute the notice by making an application for dispute resolution.*
- ...

The Tenant was deemed served with the Landlord's 10 Day Notice on January 5, 2022 by email. The Tenant said she did not approve service by email; however, the Landlords and Tenant did communicate by text messages and emails, and the Tenant confirmed receipt of the 10 Day Notice. I find the 10 Day Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on January 5, 2022 within the 5 days after receiving the 10 Day Notice.

The Tenant maintained that she was conducting herself as if she had received a Two Month Notice to End Tenancy for Landlord's Use pursuant to Section 49 of the Act, and was deeming January 2022 as her entitled one month rent payable under the tenancy

agreement. I found that the Landlords did not issue a Two Month Notice. Pursuant to Section 26(1), I find the Tenant was not authorized to deduct or withhold any rent amount from the Landlords. The Tenant has breached Section 26(1) of the Act and owes \$981.19 to the Landlords as noted in their 10 Day Notice. I dismiss the Tenant's application to cancel the 10 Day Notice without leave to re-apply.

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline states, *"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."*

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant notified the Landlords that the elevator was not operational on December 5, 2021. The Tenant submits that pursuant to Section 32(1) of the Act, a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The Tenant also has mobility issues, so needs the use of an elevator for her daily living activities. On December 7, 2021, the Tenant contacted the strata property manager as the Tenant wanted to know when the elevator would be back up and running. When the Tenant contacted the strata property manager, she determined that the Landlords had not, in fact, notified the strata property manager about the inoperable elevator. The strata property manager restored the elevator back to working order on December 8, 2021.

I find that the Landlords have breached their obligations to provide and maintain the residential property in a state that complies with the health, safety and housing

standards required by law. Having a functional elevator assists the Tenant with her daily living needs as she uses a walker, was living on the second floor and relied on its use.

I find that the Tenant suffered the loss of use of this service for the three days it was out of order. I also find that the Tenant acted reasonably to minimize her damage or loss when she reached out to the strata property manager seeking assistance with the inoperable elevator. The Tenant submits that the loss of the elevator's use equates to a loss of \$100.00 per day; however, establishing the value for this service is not that great, and I find the loss is better determined to be $(\$981.19/31 \text{ days} * 3 \text{ days}) \94.95 .

The Applicant's claim had some merit and I award the Applicant recovery of \$50.00 of the application filing fee.

I find that the amount of unpaid January 2022 rent is \$981.19. Pursuant to Section 72(2)(b) of the Act, I Order that the Landlords are authorized to retain the security deposit held by the Landlords in partial satisfaction of the monetary award. Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order in the amount of \$386.24, which has been calculated as follows:

Monetary Order

Outstanding January 2022 Rent:	981.19
Less security deposit held by Landlords:	-\$450.00
Less damage or loss suffered by Applicant:	-\$94.95
Less portion of Applicant's filing fee:	-\$50.00
TOTAL OWING:	\$386.24

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$386.24. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: April 21, 2022

Residential Tenancy Branch