



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, ERP, RP, OLC, FFT
 LL: OPR-DR, MNR-DR

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (Tenants’ Application”) for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 11, 2022 (“10 Day Notice”);
- an order for the Landlord for emergency repairs on the rental unit pursuant to section 33;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32 of the Act;
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee of the Tenants’ Application from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenants pursuant to section 72.

The Landlord, an agent (“JD”) of the Landlord and the two Tenants (“JG” and “JB”) attended this hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JG stated the Tenants served their Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord by email on January 26, 2022. Although the NDRP was not served in accordance with the provisions of section 89 of the Act, the Landlord acknowledged

receipt of the NDRP. I find the NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

JG stated the Tenants served an amendment (“Amendment”) to the Tenants’ Application on the Landlord’s agent by email on March 7, 2022. Although the Amendment was not served in accordance with the provisions of section 88 of the Act, the Landlord acknowledged receipt of the Amendment. I find the Amendment was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Landlord stated she served her NDRP and evidence (“Landlord’s NDRP Package”) on each of the two Tenants by registered mail. The Landlord provided the Canada Post tracking numbers for service of the Landlord’s NDRP Package on each of the Tenants. I find the Landlord served each of the two Tenants with the Landlord’s NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord stated she served additional evidence on the Tenants in-person on March 28, 2022. JG acknowledged the Tenants received the Landlord’s additional evidence. I find Landlord served the two Tenants with the Landlord’s additional evidence in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Tenants’ Evidence

JG stated the Tenants served evidence on the Landlord. The Landlord disputed receiving any evidence from the Tenants. JG then stated the Tenants filed their evidence with the Residential Tenancy Branch but may not have served their evidence on the Landlord.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

As the Tenants did not serve the Landlord with their evidence at least 14 days before the hearing, I will not admit their evidence for this hearing.

Preliminary Matter – Correction of Rental Address in Tenants' Application

At the outset of the hearing, I noted there was a typographical error in the rental address stated in the Tenants' Application. JG requested that I amend the Tenants' Application to correct this error.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

With the Landlord's consent, I amended the Tenants' Application to correct the rental address.

Issues

Are the Tenants entitled to:

- cancellation of the 10 Day Notice?
- recover the filing fee of the Tenants' Application from the Landlord?
- if the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to a Monetary Order for the rental arrears owed by the Tenants pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the Landlord, only the details of the respective submissions and/or arguments of the parties relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the Tenants claims and Landlord's claims and my and my findings are set out below.

The Landlord submitted a copy of the tenancy agreement. The tenancy commenced on May 30, 2021, for a fixed term ending May 30, 2022, and continued thereafter on a

month-to-month basis. The Tenants were required to pay rent of \$1,900.00 on the 1st day of each month. The Tenants were required to pay a security deposit of \$900.00 by May 29, 2021. The Landlord acknowledged the Tenants paid the security deposit and that she was holding the deposit in trust for the Tenants.

JD stated he served the 10 Day Notice on the Tenants' door on January 11, 2022. JG acknowledged the Tenants received the 10 Day Notice. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received the 10 Day Notice on January 14, 2022.

The Landlord testified the 10 Day Notice stated the Tenants had rental arrears of \$1,900.00 as of January 1, 2021. The Landlord stated that, as of the date of this hearing, the Tenants had rental arrears of \$2,850.00 calculated as follows:

| Date | Rent Owed | Paid | Balance |
|--------------|-------------------|-------------------|-------------------|
| 01-Jan-21 | \$1,900.00 | | \$1,900.00 |
| 01-Feb-21 | \$1,900.00 | \$1,900.00 | \$1900.00 |
| 21-Feb-21 | | \$1,900.00 | \$0.00 |
| 01-Mar-22 | \$1,900.00 | | \$1,900.00 |
| 01-Apr-22 | \$1,900.00 | \$950.00 | \$2,850.00 |
| Total | \$7,600.00 | \$4,750.00 | \$2,850.00 |

Analysis

1. Order of Possession:

Sections 46(1) through 46(5) of the Act state:

- 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*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

- (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.
- (5) 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
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates*

[emphasis in italics added]

The Tenants were served with the 10 Day Notice on January 11, 2022 and, pursuant to section 90 of the Act, were deemed to have received the 10 Day Notice on January 14, 2022. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or January 20, 2022 within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB Branch disclose the Tenants made their application on January 14, 2021. Accordingly, the Tenants made their application within the five-day dispute period.

JG admitted the Tenants have not moved out of the rental unit. JG admitted the Tenants did not pay the rent for January 1, 2022. I find the Tenants owed the Landlord \$1,900.00 for rental arrears as stated in the 10 Day Notice. Section 26(1) of the Act states:

- 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.

As such, the Tenants were responsible for paying rent when it was due. Based on the above, I find the 10 Day Notice was issued for a valid reasons. As such, I dismiss the Tenants' application without leave to reapply.

Sections 55(1) and 55(1.1) of the Act state:

- 55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52. Pursuant to section 68(2)(1) of the Act, I order the tenancy ended on April 12, 2022. Pursuant to section 55(1) of the Act, I order the Tenants provide the Landlord with vacant possession of the rental unit.

2. Monetary Order for Unpaid Rent

JG admitted the Tenants made total rental payments of \$4,750.00 for the period January through April, 2022 leaving rental arrears of \$2,850.00. Pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$2,850.00, representing the unpaid rental arrears from January to April 2022 inclusive.

Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$900.00 in partial satisfaction of the Monetary Order made above.

3. Landlords Filing Fee

As the Landlord has been successful in her application, pursuant to section 72(1), I order the Tenants pay for the Landlord's filing fee.

Conclusion

The Tenants' application is dismissed without leave to reapply.

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.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlord \$2,050.00 representing the following:

| Description | Amount |
|---|-------------------|
| Rental Arrears from January to April 2022 inclusive | \$2,850.00 |
| Landlord's filing fee for her application | \$100.00 |
| Less Tenants' Security Deposit | -\$900.00 |
| Total | \$2,050.00 |

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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: April 15, 2022

Residential Tenancy Branch