



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR, OLC**
 LL: OPR-DR, MNR-DR, MNRL, FFL

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 3, 2021 (“10 Day Notice”) pursuant to section 46; and
- an order for the Landlords to comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or the tenancy agreement pursuant to section 62.

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

- an Order of Possession pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee from the Tenants pursuant to section 72.

The original hearing of this application was held on March 22, 2022 (“Original Hearing”). The Landlords’ provided conflicting information regarding the amount of rent owing by the Tenants and it became apparent that the parties would not be able to complete their testimony and rebuttals. As a result, I adjourned the hearing and issued a decision dated March 22, 2022 (“Interim Decision”) pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The Interim Decision and Notices of Dispute Resolution Proceeding for this adjourned hearing were served on the parties by the Residential Tenancy Branch (“RTB”).

The two Landlords (“DW” and “MW”), and one the two Tenants (“CD”) attended the Original Hearing. DW and MW, but neither of the two Tenants, attended this hearing. DW, MW and CD were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses at the Original Hearing. DW and MW were given a full opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses at this hearing.

At the Original Hearing, CD stated the Tenants served their Notice of Dispute Resolution Proceeding and evidence (“Tenants’ NDRP Package”) on the Landlords around December 12, 2021 by registered mail. CD stated that the Canada Post receipt for the registered mailing of the Tenants’ NDRP Package was stolen from her car. DW acknowledged the Landlords had received the Tenants’ NDRP Package by registered mail. I find the Tenants’ NDRP Package was served on the Landlords in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Landlords were served with the Tenants’ NDRP Package on December 17, 2021.

At the Original Hearing, DW stated the Landlords served their Notice of Dispute Resolution Proceeding, amendment to the Landlords Application and evidence (“Landlords’ NDRP Package”) on the Tenants by registered mail on March 2, 2021. DW provided the Canada Post tracking number to corroborate his testimony that the Landlords’ NDRP Package was served on the Tenants by registered mail. I find the Landlords’ NDRP Package was served on the Tenants in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Correction of a Tenant’s Name

At the Original Hearing, I noted that the surname of one of the two Tenants (“JH”) was duplicated in the Tenants’ Application. CD stated this was an inadvertent error that was made when the Tenants’ Application was filed online. CD requested that I amend the Tenants’ Application to correct this error.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

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.

As CD's request could reasonably be anticipated by the Landlords, I amended the Tenants' Application to remove the duplication of JH's surname.

Preliminary Matter - Unrelated Issue

In the Tenants' Application, the Tenants seek an order that the Landlords comply with the Act, Regulations and/or tenancy agreement pursuant to section 62 of the Act.

Paragraph 2.3 of the RoP states:

Related Issues

- 2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the most urgent matter set out in the Tenants' Application is to seek cancellation of the 10 Day Notice. I find the Tenants' claim for an order that the Landlords comply with the Act, Regulations and/or tenancy agreement is not sufficiently related to the Tenants' claim for cancellation of the 10 Day Notice. Based on the above, the Tenants' claim for an order that the Landlords to comply with the Act, Regulation and/or tenancy agreement is severed from the Tenants' Application and dismissed. If I cancel the 10 Day Notice, then I will dismiss that claim with leave to reapply. If I do not cancel the 10 Day Notice is not cancelled, then I will dismiss that claim without leave to reapply.

Issues to be Decided

Are the Tenants entitled to:

- cancellation of the 10 Day Notice?
- If the Tenants are not entitled to cancellation of the 10 Day Notice, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?
- Are the Landlords entitled to a Monetary Order for the Unpaid Rent 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 parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the two applications and my findings are set out below.

The parties agreed the tenancy commenced on May 15, 2021, for a fixed term ending June 30, 2023, with rent of \$5,200.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$2,600.00. MW stated the Tenants only paid \$2,500.00 for the security deposit. CD stated it was necessary to obtain a key for the mailbox. CD stated the Landlords had agreed to credit the Tenants for \$100.00 for the expenses the Tenants incurred to obtain a replacement key. MW stated the Landlords did not agree to give the Tenants a credit for replacement of the mailbox key. CD stated she had documentary evidence that the Landlords agreed to the Tenants deducting \$100.00 from the rent but stated the Tenants did not serve that evidence on the Tenants or submit the evidence to the RTB.

MW stated the Landlords served the 10 Day Notice on the CD in person on December 5, 2021. MW stated the Landlords also served the 10 Day Notice on each of the Tenants by registered mail on December 16, 2022. MW provided the Canada Post tracking number for service of the 10 Day Notice. MW stated the Landlords' NDRP Package was returned to the Landlords as the Tenants did not pick it up. CD stated service of the 10 Day Notice was made by the Landlords in-person on the Tenants on December 18, 2021.

At the Original Hearing, MW testified the 10 Day Notice stated the Tenants had rental arrears of \$8,500.00, and arrears for utilities of \$765.38, as of December 1, 2021. At this hearing, MW acknowledged the Landlords did not give the Tenants a written demand for payment of the utilities as required by section 46.6 of the Act. As such, MW stated the Landlords were withdrawing their claim for the unpaid utilities. At this hearing, MW stated the Tenants now have rental arrears of \$26,100.00 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Jun-21	\$5,200.00	\$2,600.00	\$2,600.00
03-Jun-21		\$2,000.00	\$600.00
01-Jul-21	\$5,200.00	\$2,500.00	\$3,300.00
01-Aug-21	\$5,200.00	\$2,600.00	\$5,900.00
09-Aug-21		\$1,300.00	\$4,600.00

10-Aug-21		\$2,600.00	\$2,000.00
01-Sep-21	\$5,200.00	\$2,500.00	\$4,700.00
01-Oct-21	\$5,200.00	\$2,600.00	\$7,300.00
14-Oct-21		\$2,000.00	\$5,300.00
01-Nov-21	\$5,200.00	\$5,200.00	\$5,300.00
01-Dec-21	\$5,200.00		\$10,500.00
01-Jan-21	\$5,200.00		\$15,700.00
01-Feb-22	\$5,200.00	\$2,600.00	\$18,300.00
28-Feb-22		\$2,600.00	\$15,700.00
01-Mar-22	\$5,200.00		\$20,900.00
01-Apr-22	\$5,200.00		\$26,100.00
Total	\$57,200.00	\$31,100.00	\$26,100.00

Analysis

Sections 46 of the Act states:

- 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 by that date.*

MW stated the Landlords served the 10 Day Notice on the CD in person on December 5, 2021. MW stated the Landlords also served the 10 Day Notice on each of the Tenants by registered mail on December 16, 2022. MW provided the Canada Post tracking number for service of the 10 Day Notice. MW stated the registered mail tracking number was returned to the Landlords as it was not picked up by the Tenants. CD stated service of the 10 Day Notice was made by the Landlords in-person on the Tenants on December 18, 2021. However, the records of the RTB indicate the Tenants made the Tenants' Application on December 13, 2021. It would seem inconceivable that the Tenants would have made the Tenants' Application on December 13, 2021 if they had been served with the 10 Day Notice on December 18, 2021. Due to the conflicting evidence on the date of service of the 10 Day Notice on the Tenants in-person by the Landlords, I will assume that the Tenants made the Tenants' Application within the 5-day dispute period to dispute the 10 Day Notice.

At the Original Hearing, MW testified the Tenants had rental arrears of \$10,500.00 as of December 1, 2021. However, MW was unable to reconcile the calculations the Landlords used to calculate the amount of rental arrears owed by the Tenants as of December 1, 2021. At the Original Hearing, CD stated she had evidence that the Landlords agreed to a credit of \$100.00 for of replacement of the mailbox key. CD also stated she was unable respond to the amount claimed by the Landlords for rental arrears as they did not match with her records. I adjourned the Original Hearing, in part, to allow the Landlords to provide a spreadsheet that provided detailed calculations for rental arrears claimed by the Landlords as well as to permit the Tenants to submit evidence that the Landlords consented to the deduction of \$100.00 from rent for replacement of the mailbox key.

The Tenants did not submit any evidence for this hearing to corroborate CD's testimony the Tenants were entitled to deduct \$100.00 from the rent owing to the Landlords. MW submitted an updated ledger that provided detailed calculations of the rental arrears owing from June 2021 through to April 2022. The ledger submitted by the MW did not appear to reconcile with the rental arrears claimed by the Landlords until I noticed the Landlords had included the \$100.00 shortfall from the security deposit, that had not been paid by the Tenants, as part of the rental arrears claimed by the Landlords. I told CD that the Landlords were not entitled to deduct this \$100.00 shortfall as unpaid rent. After adjusting the amount of rental arrears for each month by \$100.00, CD reconciled the rental arrears owed by the Tenants, for each month commencing from September 2021 through to April 2022, to my satisfaction. Based on the undisputed testimony of CD, I find the Landlords have established, on a balance of probabilities, the Tenants owed \$10,500.00 for rental arrears as of December 1, 2021.

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 reason and I dismiss the Tenants' Application in its entirety.

Section 55 of the Act states:

- 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 section 52 form and content requirements. The undisputed testimony of MW was the Tenants have not vacated the rental unit. Pursuant to section 68(2)(1) of the Act, I order the tenancy ended as of April 5, 2022. Based on the above, pursuant to section 55(1) of the Act, I order that the Tenants provide the Landlords with vacant possession of the rental unit.

I am satisfied that, upon hearing the undisputed testimony and evidence of MW, the Tenants owe the Landlords \$26,100.00 for rental arrears covering the period from December 2021 to April 2022. Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlords \$26,100.00. Pursuant to section 72(2)(b), the Landlords may

deduct the Tenants' security deposit of \$2,500.00 from the \$26,100.00 in satisfaction of the Monetary Order made above.

As the Landlords have been successful in the Landlords' Application, they may recover their \$100.00 filing fee from the Tenants pursuant to section 72(1) of the Act.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlords 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), I order that the Tenants pay the Landlords \$23,700.00 representing the following:

Description	Amount
Rental Arrears	\$26,100.00
Filing Fee of Landlords' Application	\$100.00
Security Deposit Credit	-\$2,500.00
Total	\$23,700.00

This Monetary Order may be filed and enforced in the Provincial 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: April 6, 2022

Residential Tenancy Branch