



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPU, MNRL, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On March 21, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel 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”).

On March 25, 2022, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing, with N.A. attending as a co-tenant. Both Landlords, A.M. and Ak.M., attended the hearing as well. 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 in attendance provided a solemn affirmation.

Service of documents was discussed and accepted.

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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, 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 December 6, 2021, that rent was currently established at an amount of \$1,500.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Landlord A.M. testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on March 19, 2022 by hand. He submitted that \$2,200.00 was owing for rent on March 1, 2022 because the Tenants had only paid \$800.00 of February 2022 rent and they did not pay any rent for March 2022. As well, he indicated that the Tenants have not paid any rent since service of the Notice. He also noted that utilities were outstanding on the Notice; however, as a demand letter had not

been served 30 days prior to the issuance of this Notice, he was informed that the matter of unpaid utilities would not be considered in this hearing. The effective end date of the tenancy was noted on the Notice as March 28, 2022.

He testified that the Tenants were sent six reminders to pay the rental arrears. He stated that the Tenants did not pay any rent on February 1, 2022, and only paid \$800.00 on February 16, 2022, towards February 2022 rent. He advised that he sent multiple requests to the Tenants about the arrears, and he cited text messages submitted as documentary evidence where the Tenants stated that they “were working on it”, that they “needed more time”, and that they had difficulty with forms for social assistance. In addition, he referred to a text message on March 17, 2022, where the Tenants confirmed that they would get a cheque for social assistance and would be able to pay the rent by March 23, 2022. Despite this, the Tenants never paid any of the arrears.

Tenant A.C. advised that \$700.00 was paid to the Landlords by hand on February 1 or 2, 2022, and that they paid \$800.00 to the Landlords by hand on February 16, 2022. Tenant T.B. advised that she witnessed these rent exchanges. Furthermore, he testified that he paid the Landlords \$1,500.00 by hand on March 20, 2022, for March 2022 rent. T.B. again stated that she witnessed this exchange. A.C. confirmed that they did not pay any rent for April or May 2022, however. He claimed that the reason for this was because they could not prove that they had paid the previous months’ rent, so they just elected not to pay rent at all.

A.C. then advised that he was not sure of any of the dates that he testified to, and he then confirmed that they were not able to pay March 2022 rent on March 1, 2022, as required by the tenancy agreement. He subsequently submitted that he sent a text message to the Landlords on March 24, 2022, stating that they were “able to come up with a bit of rent” and that they “had \$500.00 now and that it would be great if it was accepted.”

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 received the Notice on March 19, 2022. 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 March 19, 2022, the Tenants must have paid the rent in full or disputed the Notice by March 24, 2022 at the latest. While the Tenants claim to have paid the rent in full, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the evidence and testimony of the parties, I have before me documentary evidence from the Landlords demonstrating that they made multiple requests to the Tenants to pay rental arrears in February and March 2022. In reading these messages, it appears to confirm the Landlords' position that the Tenants

acknowledged that rent was in arrears, that they were selling their property in an effort to come up with some money for rent, and that they were having difficulties being approved for assistance.

Conversely, I have the Tenants' affirmed testimony that the rent for February and March 2022 was paid in full and that this was witnessed by T.B. However, I note that A.C. originally testified that March 2022 rent was paid on March 20, 2022, but he then referred to his own text messages sent on March 24, 2022, confirming that they only had a "bit of rent", that it was only "\$500.00", and that he was hoping that it would be accepted. Clearly A.C.'s submission is completely contradictory to his own previous testimony that rent for March 2022 was paid in full on March 20, 2022. I find that this inconsistency causes me to doubt the reliability and credibility of A.C. on the whole. Moreover, I note that in the description of why the Tenants were disputing the Notice in their Application, they did not state that they had paid the rent in full and that the Notice was not valid. Rather they described a dispute over a heating and gas leak issue. If they had paid the rent in full to cancel the Notice as alleged, I find it reasonable to conclude that they would indicate this as the purpose for disputing the Notice. Given that they have an entirely different reason for wanting to dispute the Notice, I find that this further supports a conclusion that the rent had not been paid as alleged.

Furthermore, A.C.'s reasoning for them not paying April or May 2022 rent simply does not make sense, nor is it consistent with common sense or ordinary human experience. Based on the doubts created by A.C.'s inconsistent testimony, I find it more likely than not that they simply elected not to pay these months of rent either. Finally, had the rent been paid according to the Tenants' submissions, it is not clear to me why the Landlords would continue to send text messages to the Tenants regarding rental arrears, nor would it make sense why the Tenants would respond in the manner that they did if rent was paid in full.

Considered in its totality, I find the Landlords to be more credible witnesses than either A.C. or T.B. The Landlords provided consistent, logical testimony which was supported with documentary evidence where available. On the contrary, A.C. provided entirely inconsistent and contradictory testimony that was not persuasive or compelling. Based on my assessment of the evidence and testimony before me, I find that I prefer the Landlords' evidence on the whole. I am satisfied that A.C. and T.B. were being entirely untruthful in their testimony, and I give no weight to their submissions. As such, I do not find that the Tenants paid the rent in full to cancel the Notice.

While the Tenants did dispute the Notice, there was no evidence submitted to support that they had a valid reason, or any authority under the *Act*, for withholding the rent. Based on the consistent evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice 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 pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

Regarding the Landlords' claims for monetary compensation, based on the evidence before me, I grant the Landlords a monetary award in the amount of **\$5,200.00** for the outstanding rental arrears.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee.

Pursuant to Section 67 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Rental arrears for February 2022	\$700.00
Rental arrears for March 2022	\$1,500.00
Rental arrears for April 2022	\$1,500.00
Rental arrears for May 2022	\$1,500.00
Filing fee	\$100.00
Total Monetary Award	\$5,300.00

Conclusion

Based on the above, the Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Furthermore, 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.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$5,300.00** 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.

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: May 20, 2022

Residential Tenancy Branch