



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

<u>Parties</u>	<u>File No.</u>	<u>Codes:</u>
(Tenants) A.P., T.K.	210061774	CNL, RR, RP, OLC, FFT
(Landlord) P.S.	210065386	OPC, MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

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

The Tenants applied for:

- An Order to cancel a Two Month Notice to End Tenancy for Landlord's Use dated January 28, 2022 ("Two Month Notice");
- an Order to reduce the rent for repairs, services or facilities agreed upon but not provided;
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- to recover the \$100.00 cost of their Application filing fee.

The Landlord applied for:

- an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated February 18, 2022; ("One Month Notice");
- a Monetary Order of \$1.00 for damages for the Landlord, retaining the security deposit to apply to the claim;
- a Monetary Order of \$1,425.00 for damage or compensation for damage under the Act, retaining the security deposit for this claim; and
- a Monetary Order for unpaid rent of \$2,893.00.

The Tenants, [A.P.] and [T.K.], and the Landlord 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 Landlord 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, both Parties indicated different matters of dispute on their respective applications, the most urgent of which are the applications to set aside a Two Month Notice and for an Order of Possession for Cause. As such, I advised them that not all the claims on the applications are sufficiently related to be determined during this proceeding. Therefore, the Parties’ other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section

55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for dispute resolution. However, in some situations, the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord for the claims before me.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Are the Tenants eligible for reimbursement of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2020, and ran to August 31, 2021, and from then, it operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenants to pay the Landlord a (current) monthly rent of \$2,893.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,425.00, and no pet damage deposit. The Landlord confirmed that she still holds the security deposit in full.

The One Month Notice was signed and dated February 18, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on February 18, 2022, with an effective vacancy date of March 31, 2022, and it was served on the grounds that Tenants are repeatedly late paying rent; the Tenants or a person permitted on the property by the Tenants has engaged in illegal activity that has, or is likely to: damage the Landlord's property; and that the Tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I asked the Landlord why I should award her an order of possession of the rental unit, and she said:

I applied for a an order of possession for cause, because they are repeatedly and significantly late paying rent. I have provided evidence as a backup to this. We all

have financial difficulties from time to time, but I have to keep chasing them and they don't want to pay and so on.

The second problem is the illegal activity, which is squatting – staying at a house without paying rent. And making threats as indirect or direct about burning down the house. Statements such as 'lady there's smoke coming out of your house or there are sparks and fire coming out of your house.' I reached the fire department who said they could not do anything, until something happens, And I called the police, who said 'Until we see actual damage to the house, we can't do anything'. Maybe [A.P.] is angry and just making statements. I want to proceed with payment of rent that has been either late – 9 of the last 13 months, and for three months it was not paid. To keep things granular, we can cover that and review the materials for this.

The Tenants responded:

The complaints about the fire is because we had sparks coming out of our electrical outlets - she's had electricians to come in. The plugs are not working. This has been an issue and has been explained and will start a fire. Someone who lived here changed the electricals. She said 'Don't use the microwave and this at the same time . . . everything is sparking, it can start a fire. We're trying to look after the home, because we live here. This has been going on for months.

I asked the Landlord when the last time was that the Tenants paid her rent. The Landlord referred me to a document with her bank statements showing dates and amounts of rent payments from April 2021 through April 2022. The following are the dates and amounts, which the Tenants paid rent to the Landlord for the last six months:

RENT DUE	AMOUNT PAID	DATE PAID
November 1, 2021	\$1,650.00 \$120.00 \$1,080.00	November 2 , 2021 November 8 , 2021 November 8 , 2021
December 1, 2021	\$2,850.00	December 3 , 2021
January 1, 2022	\$2,500.00 \$393.00	January 3 , 2022 January 7 , 2022

February 1, 2022	\$2,892.75	February 4, 2022
March 1, 2022	\$0.00	n/a
April 1, 2022	\$0.00	n/a
May 1, 2022	\$0.00	From testimony in May 3, 2022 hearing

The Tenants suggested that they paid the rent on time, but that the banks slow things down in transferring funds between accounts. They also suggested that the Landlord may not accept the payments as soon as they are available to her. The Landlord said: “I certify that I have no reason to receive or deposit late, I need the rent to pay my mortgage.”

The Tenants said:

Because of Covid, it put everyone into a loop. I have never not kept her informed that we're a couple days behind, she has always been okay with that. It was until we had issues with the house that all of this snowballed. We had all the text messages, all the emails. February was the first time we received a 10 Day Notice. Everything started to snowball and get progressively worse. The furnace needed to be replaced, because it's 40 years old. We had four repair guys who all said it needed to be replaced. With our frustration with things not being fixed, it created animosity. We love this place. When we have to pay out of our own pockets for repairs. . . .

We had to have a different furnace guy – we called him; we called an electrical guy. These are people we know - not some random people. We called people we trust and know.

It was never our intention to not pay rent, to not do it on time, but when you don't live in a house that's functioning. We were at a loss of what to do at that point. If you don't want to fix the house. . . .

The Landlord said:

What they're saying is fabricated. I have provided evidence of the repairs. I'm at the risk of losing my house, because as soon as they moved in, they're paying

late. They're trying to dilute the claim with repairs.

They're responsible . . . for 8 months I paid utilities. For the last 14 months, nine were significantly late for their rent. I have never been okay with that. Why can't they pay their rent on time? When they don't carry their end, it puts my ability to maintain the house. It was fully inspected, everything was fine; I have all this evidence of the service providers - receipts to this file. I will review them.

The Tenants said:

Just that we're not squatters. We work hard every day. I'm not going to let some random person in my home if we're not here. The furnace not working, electrical not working - things on the lease that we have to look after. She's in San Francisco. Getting a hold of her is not easy. Our furnace is not working. We're not trying to make any ill will out of this. If it's not working, that's on us as tenants. We're not doing any illegal activity. According to the RTB, because she gave us an eviction notice, we cannot do anything until this hearing. We're at a loss of what to do. We're not trying to do anything other than look after this home, which is what we did from the very beginning.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenants were deemed served with the One Month Notice on February 21, 2022, three days after it was posted to the door of the rental unit.

Section 47 (5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, 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 by that date.

As there is no evidence before me that the Tenants disputed the One Month Notice, I find they are conclusively presumed under section 47 (5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on March 31, 2022. As a result, I find that the Tenants are overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act.

As the Landlord's undisputed testimony is that rent for March and April 2022 have not

been paid, the Order of Possession will be effective two days after deemed service on the Tenants, pursuant to section 90 of the Act.

I grant the Landlord an **Order of Possession** of the rental unit, pursuant to section 55 of the Act, which will be **effective two days after being served** to the Tenants, pursuant to section 90 of the Act.

As this is conclusive of the tenancy, I find I do not need to review the Tenants' application to cancel the Two Month Notice. Further, given the result of this Decision, I decline to award the Tenants with reimbursement of their \$100.00 application filing fee.

The Tenants other claims are dismissed without leave to reapply, as they are now irrelevant, given the end of the tenancy, and pursuant to section 62 of the Act.

The Landlord's other claims are dismissed with leave to reapply, pursuant to section 62 of the Act.

Given the Tenants' testimony in the hearing, I have cause for concern that the Landlord is not maintaining the residential property sufficiently. **I caution the Landlord** to review the *Residential Tenancy Act*, to familiarize herself with her obligations as a landlord. The Landlord should, in particular, read section 32 of the Act, which requires that a landlord maintain the rental unit 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, which make it suitable for occupation by the tenant.

Conclusion

The Landlord is successful in this matter, as she provided sufficient proof to meet her burden of proof on a balance of probabilities, establishing the validity of the One Month Notice. Further, the Tenants failed to dispute the One Month Notice, and therefore, they are conclusively presumed by section 47 (5) of the Act to have accepted the One Month Notice. The Tenants claims are dismissed without leave to reapply.

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 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's other claims are dismissed with leave to reapply.

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: May 04, 2022

Residential Tenancy Branch