



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants: 1) **CNC, FFT**
2) **MNDCT, CNR, OLC, DRI, FFT**
Landlord: **OPC, FFL**

Introduction

This hearing dealt with the Tenants' applications 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. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
4. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
5. An Order to dispute a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for the One Month Notice for Cause pursuant to Section 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, JL, the Tenants, MB and RB, and the Tenants' Legal Counsel, TB, 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 Landlord served the Tenants with the One Month Notice on February 3, 2022 by posting the notice on the Tenants’ door. The Tenants confirmed receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on February 6, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenants with the 10 Day Notice on April 4, 2022 by posting the notice on the Tenants’ door. The Tenants confirmed receipt of the 10 Day Notice as noted in the April 13, 2022 Notice of Dispute Resolution Proceeding document on April 4, 2022. I find the 10 Day Notice was sufficiently received by the Tenants on April 4, 2022 according to Section 71(2)(c) of the Act.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package for the One Month Notice on February 15, 2022 (the “NoDRP package-One Month Notice”). I find that the Landlord was sufficiently served with the NoDRP package-One Month Notice on February 15, 2022 in accordance with Section 71(2)(c) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for the 10 Day Notice on April 13, 2022 by Canada Post registered mail (the “NoDRP package-10 Day Notice”). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package-10 Day Notice. I find that the Landlord was deemed served with the NoDRP package on April 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord was served with the Tenants’ evidence via Canada Post registered mail on May 11, 2022. The Tenants provided the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Tenants’ evidence. I find that the Tenants’ evidence was deemed served on the Landlord on May 16, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord testified that they served the Tenants with the Notice of Dispute Resolution Proceeding package-OP/MN on April 29, 2022 by Canada Post registered mail (the “NoDRP package-OP/MN”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenants confirmed receipt of the Landlord’s NoDRP package-OP/MN. I find that the Tenants were deemed served with the NoDRP package-OP/MN five days after mailing them on May 4, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties’ testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on their applications, the most urgent of which are the claims to cancel the 10 Day Notice and the One Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants’ requests to cancel the 10 Day Notice, the One Month Notice, and the claim for recovery of the application filing fee at this proceeding. The Tenants’ other claims are dismissed without leave to re-apply.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord’s 10 Day Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Are the Tenants entitled to a cancellation of the Landlord’s One Month Notice?
4. Are the Tenants entitled to recovery of the application filing fee?
5. Is the Landlord entitled to an Order of Possession for the One Month Notice?
6. Is the Landlord 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 tenancy began as a fixed term tenancy on February 1, 2015. The fixed term ended on January 31, 2016, then the tenancy continued on a month-to-month basis. Monthly rent is \$885.85 payable on the first day of each month. A security deposit of \$375.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant added that they paid a pet damage deposit of \$300.00, and at that time they had a different property manager.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$900.95 in outstanding rent on April 1, 2022. The effective date of the 10 Day Notice was April 17, 2022.

The Landlord testified that the Tenants dropped off a cheque for \$884.72 at the end of March which was postdated for April 25, 2022. The Landlord stated that a receipt was issued for use and occupancy only. The Landlord continued by reporting that the Tenants were short paying rent since the renewal amount, but their system does not print off a notice to the Landlord if the amount owing is less than \$250.00.

The Landlord stated that the Tenants issued a new cheque on April 13, 2022 for \$900.95, and later paid everything owing for May.

The Tenants stated that the rent issue was a mistake and that it is no longer an issue. The Landlord is seeking an Order of Possession.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid 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 Landlord's 10 Day Notice was sufficiently received by the Tenants on April 4, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on April 5, 2022, which is within the five days after receiving the notice. The Tenants paid the outstanding rent amount of \$900.95 on April 13, 2022. The Tenants did not testify that they had the Landlord's authorization or an Arbitrator's Order to deduct any portion of the rent that was owing. After receiving the 10 Day Notice, the Tenants had until April 9, 2022 to pay the outstanding rent amount; however, this did not occur. I find that the Tenants' application to cancel the Landlord's 10 Day Notice is dismissed without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession for unpaid rent. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 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.*

I previously found that the Landlord's 10 Day Notice complied with Section 52 of the Act, and I uphold the Landlord's 10 Day Notice. The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenants.

This granting of the Order of Possession is for unpaid rent and not for cause. The merits of the Landlord's One Month Notice were not considered in this Decision and the One Month Notice is cancelled. The Landlord is not entitled to recovery of the application filing fee which was paid for the Landlord's application for an Order of Possession for the One Month Notice.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme 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 Act.

Dated: June 10, 2022

Residential Tenancy Branch