



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lighthouse Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

In this application for dispute resolution, the tenants applied on February 25, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 15, 2022 (the 10 Day Notice);
- an order to suspend or set conditions on the landlord's right to enter the rental unit; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings. At the beginning of the hearing, I advised those present they must not interrupt me, or each other, or allow distractions of any kind during the proceeding.

The tenants' agent testified the Notice of Dispute Resolution Proceeding was served on the landlord by registered mail on March 11, 2022, and the landlord confirmed they received it.

The tenants' agent testified the tenants' evidence was served on the landlord by registered mail on May 13, 2022, to the landlord's address for service as noted on the NDRP, and provided a tracking number as noted on the cover page of this decision. The landlord testified they did not receive the tenants' evidence. Having checked the tracking number, I find the tenants served their evidence on the landlord in accordance with section 89 of the Act, and deem the tenants' evidence received by the landlord on May 18, 2022, in accordance with section 90 of the Act.

Therefore, I will consider the tenants' evidence in my decision.

The landlord testified they served their responsive evidence on the tenants by registered mail on May 11, 2022, and the tenants' agent confirmed it was received.

Preliminary Matter

Rule of Procedure 2.3 states:

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.

As it is not related to the central issue of whether the tenancy will continue, during the hearing I dismissed, with leave to reapply, the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Are the tenants entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began October 1, 2021; rent is \$7,000.00, due on the first of the month; and the tenants paid a security deposit of \$3,500.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. The landlord testified that the Notice was served on the tenants by registered mail on February 15, 2022; the tenants' agent confirmed the Notice was received on February 24, 2022.

The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the tenants failed to pay rent in the amount of \$28,000.00, due on February 1, 2022.

The landlord testified they are seeking to recover unpaid rent as follows:

Month	Rent	Rent paid	Monthly amount owing
November 2021	\$7,000.00	\$0.00	\$7,000.00
December 2021	\$7,000.00	\$0.00	\$7,000.00
January 2022	\$7,000.00	\$0.00	\$7,000.00
February 2022	\$7,000.00	\$0.00	\$7,000.00
March 2022	\$7,000.00	\$0.00	\$7,000.00
April 2022	\$7,000.00	\$0.00	\$7,000.00
May 2022	\$7,000.00	\$0.00	\$7,000.00
June 2022	\$7,000.00	\$0.00	\$7,000.00
Total			\$56,000.00

A tenant ledger is submitted in support, showing charges and payments from October 1, 2021 to April 1, 2022.

The landlord testified that the tenants did not seem to understand that rent must be paid when due, and that the tenants always had another excuse why they could not pay rent, including that their assets were frozen.

The landlord testified that in January 2022 they were told the rent would be coming soon, but that they had received no rent payments since a November 2021 cheque that was returned for non-sufficient funds.

The landlord provided additional testimony regarding their efforts to conduct an inspection of the property, and receiving “threatening” emails from the tenants in response. The landlord testified they were given a notice not to trespass by the tenants.

The tenants’ agent testified that rent was paid as follows, via Wise transfers. I have calculated the cumulative balance owing based on the testimony of the tenants’ agent on rent paid:

Month	Rent	Rent paid/when	Cumulative balance owing
November 2021	\$7,000.00	\$7,000.00/Nov 12	\$0.00
December 2021	\$7,000.00	\$0.00	\$7,000.00
January 2022	\$7,000.00	\$0.00	\$14,000.00
February 2022	\$7,000.00	\$28,000.00/Feb 21	-\$7,000.00

March 2022	\$7,000.00	\$0.00	\$0.00
April 2022	\$7,000.00	\$28,000.00/Apr 1	-\$21,000.00
May 2022	\$7,000.00	\$0.00	-\$14,000.00
June 2022	\$7,000.00	\$0.00	-\$7,000.00

The tenants submitted receipts for the three Wise transfers as evidence.

The landlord testified that the tenants' agent did not mention the November 12, 2021 transfer in the first hearing between the parties.

The tenants' agent testified that as the tenants' personal assets were frozen, their accountant arranged for the three above-noted transfers to be made from a business account.

The tenants' agent testified that the accountant had emailed the landlord, requesting confirmation of receipt of the rent money. A February 21, 2022 email from the accountant to the landlord is submitted as evidence. The tenants' agent testified that the tenants' side had received nothing from the landlord since January, and had received no request for rent since November.

The tenants' agent submitted that the landlord had provided no evidence that the rent was not paid.

The landlord testified that they have not received any funds from the tenants since the first month's rent of \$7,000.00 and the \$3,500.00 security deposit the landlord insisted on receiving before giving the tenants the keys.

The tenants' agent referred to previous hearings between the parties, stating that the landlord's documents were not served properly, and that the landlord's claims were vexatious and frivolous. The file numbers of related hearings are noted on the cover page of this decision.

The tenants' agent referred me to "Googled" negative reviews of the landlord's company, submitted as evidence, and stated that the landlord has "a pattern of laziness, incompetence, and deceit."

The landlord submitted they are a licensed real estate company and comply with the requirements of the BC financial services authority. The landlord submitted that their accounts are reconciled monthly, "to the penny." The landlord submitted that they don't

know where the tenants' payments were sent, but that they were not sent to the landlord, and if they were, they would have shown up. The landlord referred to the tenant ledger submitted as evidence.

The landlord testified they received a cheque in November, which came back NSF, and that they had not received any Wise transfers.

The tenants' agent testified that the landlord was also provided with postdated cheques, but that the tenants were not contacted about the cheques.

The landlord testified that they did not receive postdated cheques.

On more than one occasion during the hearing, the tenants' agent spoke out of turn, interrupting the testimony of the landlord and requiring me to interject.

Analysis

Section 46 of the Act allows a landlord to give notice to 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.

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

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.

(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.

Based on the parties' testimony, I find the landlord served the 10 Day Notice on the tenants by registered mail on February 15, 2022, in accordance with section 88 of the

Act, and I deem the Notice received by the tenants on February 20, 2022, in accordance with section 90 of the Act.

I find the 10 Day Notice meets the form and content provisions of section 52 of the Act as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine 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.

In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants have not paid rent as required by the tenancy agreement and the Act.

The landlord has provided affirmed testimony that the tenants have not paid rent since October 2021, and the landlord has submitted as evidence a tenant ledger which supports their testimony. The landlord submitted they are a licensed real estate company, comply with the requirements of the BC financial services authority, and that their accounts are reconciled monthly. The landlord testified that they did not receive rent from the tenants for November 2021 through June 2022, and that if they did, the payments would be part of the landlord's records.

The tenants' agent has provided affirmed testimony that the tenants' personal assets were frozen, and that rent payments were made on behalf of the tenants via transfers from a business account. The tenants have submitted three receipts for the transfers as evidence. Despite the clear requirement for tenants to pay rent, in their testimony, the tenants' agent has referred to the landlord not responding to queries requesting confirmation of rent received, and to the landlord's failure to demand payment of rent. While these claims may or may not be true, I find they direct attention away from the matter at hand: the payment of rent.

I find the evidence presented by the landlord more compelling and believable than that of the tenants, and the landlord more credible than the tenants' agent. In the hearing, the landlord has, for the most part, kept their testimony to the payment of rent. The landlord has not spoken out of turn, and though their frustration is evident, the landlord has not made disparaging statements about the tenants or the tenants' agent. The tenants' agent has sought to discredit the landlord, has presented online reviews as evidence, and more than once has spoken out of turn during the landlord's testimony, despite my instructions at the beginning of the hearing that those present are not to interrupt or allow distractions of any kind.

Therefore, favouring the landlord's evidence and finding the landlord more credible, I find the landlord has proven, on a balance of probabilities, that the tenants have not paid rent as required by the tenancy agreement and the Act. I dismiss the tenants' application for an order cancelling the 10 Day Notice, and uphold the landlord's Notice.

In accordance with section 55 of the Act, I find the landlord is entitled to an order of possession.

Though section 55(1.1) states that in the circumstances I must grant an order requiring the payment of the unpaid rent, the landlord is seeking \$56,000.00 in unpaid rent. Rule 2.8 states that \$35,000.00 is the maximum amount of a monetary claim that may be heard by an arbitrator, and Rule 2.9 states that an applicant may not divide a claim. Therefore, I decline to grant an order requiring the payment of unpaid rent. The landlord is at liberty to reapply for an amount within the jurisdiction of the Residential Tenancy Branch, or make an application to the Supreme Court for the full amount.

As the tenants are unsuccessful in their application, I decline to award them the filing fee.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession which will be effective two days after it is served on the tenants. The order of possession must be served on the tenants. The order of possession may be filed 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 *Residential Tenancy Act*.

Dated: June 13, 2022

Residential Tenancy Branch