



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNDL-S, MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent-holding the security deposit pursuant to Sections 26, 46 and 67 of the Act;
3. An Order for the Tenants to pay to repair the damage that they did during their tenancy-holding the security deposit pursuant to Section 67 of the Act;
4. An Order for compensation for my monetary loss or other money owed-holding the security deposit pursuant to Sections 38 and 67 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, EHBS, and Translator, JS, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord and Translator that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and Translator testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenants with the 10 Day Notice on January 5, 2022 by posting the notice on the Tenants' door and by email. The Landlords uploaded photos of the 10 Day Notice posted on the Tenants' door. The Landlords also provided a signed Address for Service #RTB-51 form allowing the male Tenant's email address to be used to serve legal documents. I find the 10 Day Notice was deemed served on the Tenants on January 8, 2022 according to Sections 43(1) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

The Landlords confirmed that they served the Tenants with the Notice of Dispute Resolution Proceeding package for this hearing by Canada Post registered mail and by using a permitted email address for service purposes on February 12, 2022 (the "NoDRP package"). The Landlords 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. I find that the Tenants were deemed served with the NoDRP package on February 17, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord's request to amend their original application from \$1,595.00 to \$5,104.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for a 10 Day Notice?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords entitled to an Order for the Tenants to pay to repair the damage that they did during their tenancy?

4. Are the Landlords entitled to an Order for compensation for my monetary loss or other money owed?
5. Are the Landlords 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 Landlord confirmed that this tenancy began as a fixed term tenancy on October 15, 2021. The fixed term ended on September 30, 2022. Monthly rent is \$1,595.00 payable on the first day of each month. A security deposit of \$797.50 was collected at the start of the tenancy and is still held by the Landlord. The Landlord testified that the Tenants moved out sometime in February but kept their furniture and other belongings there until April 6, 2022.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,595.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 31, 2022.

The Landlord testified that the Tenants did not pay rent in January, February, March, and April 2022.

The items listed on the Landlords' monetary order worksheet are as follows:

Unpaid rent	January 2022	\$1,595.00
Belongings occupied the rental unit	February 2022	\$1,595.00
Belongings occupied the rental unit	March 2022	\$1,595.00
Belongings occupied the rental unit	April 2022	\$1,595.00
RTB	dispute application fee	\$100.00
Black Press Classifieds	newspaper notice fee	\$541.99
The Blind Carpet Cleaner	carpet cleaning	\$298.26
		\$210.00
Apple Store	TV receiver, remote control	\$298.26
Amazon.ca	missing 1 heater	\$41.99
Canada Post	registered mails	\$27.17
Canada Post	registered mails	\$11.36
Canada Post	registered mails	\$11.36

The Landlord testified that the amount listed on the monetary order worksheet for The Blind Carpet Cleaner should correctly be written as \$210.00.

On January 26, 2022, the Landlord prepared a letter stating that certain items needed to be returned to the rental unit. On February 2, 2022, the male Tenant signed the letter which stated:

“There are a few things that you should fulfill before moving out:

1. Three heaters and the apple TV box and apple TV remote control must be returned.

Returned date: 2 heaters received February 1, 2022.”

The Landlord is seeking a Monetary Order for unpaid rent and other damages in the amount of \$7,622.13.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlords' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

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].*
- ...
- (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.*
- ...

I find that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants did not apply for dispute resolution, and the Tenants left the rental unit in February 2022. The Tenants did not take all their furniture out of the rental unit until April 6, 2022 and I Order, pursuant to Section 68(2) of the Act, that the tenancy end date was April 6, 2022. I find the total outstanding rent up to this date is \$5,104.00.

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlords seek compensation for items that were not returned after the Tenants left the rental unit. Specifically, the Landlords want compensation for an Apple TV Receiver and remote control, and one heater. Pursuant to Section 37(2) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that these electronic items that were part of the rental unit from the start, must be replaced by the Tenants. The Landlords uploaded receipts for the costs to replace these items, and I find the Landlords are entitled to compensation for their replacement. The total cost for these three items is \$340.25.

The Landlords applied for an Order of Possession pursuant to Section 55 of the Act.

Order of possession for the landlord

55 ...

- (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

- (a) *grant an order of possession, and*
(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Tenants did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlord's 10 Day Notice and I find the total outstanding rent is \$5,104.00. The Landlord no longer requires an Order of Possession, but they do seek and are entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. Further, pursuant to Section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application.

The Landlords did not point me to their evidence in support of their claims for compensation to repair damage done to the rental unit during the Tenants' tenancy and also the need for carpet cleaning. I decline to make a compensation award in this regard on these items and dismiss their application for these claims with leave to re-apply.

The Landlords stated they paid for a classified advertisement in regard to this tenancy; however, the Landlords did not provide testimony why this advertisement was necessary or required and did not provide a copy of the advertisement. I also am not making a compensation award for the classified advertisement and dismiss this part of the Landlords' claims without leave to re-apply. The Landlords must bear the cost of Canada Post registered mail purchases as their own business expenses.

The Landlords' Monetary Award is calculated as follows:

Monetary Award

Total Outstanding Rent:	\$5,104.00
Compensation for unreturned items:	\$340.25
Plus application filing fee:	\$100.00
Less security deposit:	-\$797.50
TOTAL OWING:	\$4,746.75

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$4,746.75. The Tenants must be served with this Order as soon as possible. Should the Tenant fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: June 04, 2022

Residential Tenancy Branch