Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   **CNR, OLC**

Introduction

This hearing dealt with the Tenants' application 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; and,
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord's Advocate, JD, 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's Advocate and I were the only ones who had called into this teleconference. The Landlord's Advocate was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Advocate that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Advocate testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenants with the 10 Day Notice on March 12, 2022 by posting the notice on the Tenants' door. The Landlord uploaded a Proof of Service #RTB-34 form attesting to service of the 10 Day Notice. I find that the 10 Day Notice was deemed

served on the Tenants on March 15, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenants applied for dispute resolution on March 13, 2022. The Notice of Dispute Resolution Proceeding package was issued on March 21, 2022 (the "NoDRP package"). The Landlord's Advocate stated the NoDRP package was left in the Landlord's mailbox on March 23, 2022. The Landlord's Advocate accepts service of the NoDRP package. I find that the Landlord was sufficiently served with the Tenants' NoDRP package on March 23, 2022 in accordance with Section 71(2)(b) 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 Advocate's request to amend their original application from $2,000.00 to $8,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for the 10 Day Notice?
3. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

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's Advocate confirmed that this tenancy began on October 1, 2021. The Landlord and the Tenants did not sign a tenancy agreement. Monthly rent is $2,000.00 payable on the first day of each month. A security deposit of $1,000.00 was collected and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed $2,000.00 in outstanding rent on March 1, 2022. The effective date of the 10 Day Notice was March 22, 2022.

The Landlord's Advocate testified that the Tenants have not paid rent since March 2022. The Tenants do not have an Order from an Arbitrator that they can withhold rent from the Landlord. The Landlord has not given permission to the Tenants that they can withhold rent. The Landlord seeks an Order of Possession for the rental unit, and a Monetary Order for $8,000.00.

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 Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's 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].*
>
> *…*
>
>   *(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.*
>
>   *(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.*
>
> *…*

The 10 Day Notice was deemed served on the Tenants on March 15, 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 March 15, 2022 within the 5 days after receiving the 10 Day Notice. The Tenants did not attend this hearing to give evidence about the outstanding rent amount although provided notice of this hearing date. The Landlord's Advocate testified that there is no Arbitrator's Order that the Tenants can withhold rent, and the Landlord has not provided permission that the Tenants can withhold rent. Pursuant to Section 46(5)(a), I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date, which was March 22, 2022 and I dismiss their application to cancel the Landlord's 10 Day Notice without leave to re-apply. I uphold the Landlord's 10 Day Notice.

The Tenants did not attend this hearing to give evidence about their application seeking an Order for the Landlord to comply with the Act, regulations and tenancy agreement, and I dismiss this part of their application without leave to re-apply.

As the Tenants were unsuccessful in their application, I must consider if the Landlord is entitled to an Order or Possession and a Monetary Order. 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(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.*

I have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is $8,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. 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. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	$8,000.00
Less security deposit:	-$1,000.00
TOTAL OWING:	$7,000.00

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 British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of $7,000.00. 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 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 23, 2022

Residential Tenancy Branch