



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, MNDCT, RR, LRE, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants (the Application) under the *Residential Tenancy Act* (the *Act*), on March 29, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- Cancellation of two separate One Month Notices to End Tenancy (the One Month Notices)
- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services and facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on July 18, 2022, and was attended by the Landlord and the Landlord's adult child, both of whom provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding (NODRP) states the date and time of the hearing, that the hearing will be conducted by telephone conference call and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct and I note that

the Landlord was able to attend the hearing promptly using the information contained in the NODRP, which they acknowledge was personally served on them by the Tenant. The Landlord stated at the hearing that the Tenant C.N. called them this morning at approximately 9:30 A.M. to advise them that they would not be attending the hearing today as it is their Application and they are entitled to cancel it at any time. However, rule 5.0.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that Applications to dispute a notice to end tenancy require applicant tenant(s) to submit the written consent of the landlord to withdraw their application. At the hearing the Landlord stated that they did not consent to a withdrawal and wished to proceed. Further to this, I note that no request for withdrawal was submitted by the Tenants, either verbally or in writing, in advance of the hearing and that no written consent from the Landlord for a withdrawal was submitted by the Tenants for my consideration.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that 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. As a result, the hearing proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 40 minutes, neither the Tenants nor an agent acting on their behalf appeared at the hearing to provide evidence or testimony for my consideration. As neither the Tenants nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application for the following things, without leave to reapply, as they bore the burden of proof in relation to these matters:

- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services and facilities required by the tenancy agreement or law; and

- Recovery of the filing fee.

Having made the above finding, the only matters remaining for me to determine are whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and/or a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*, as even though the Tenants filed the Application disputing the notices to end tenancy and did not appear at the hearing, landlords bear the burden of proof in relation to notices to end tenancy.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over myself and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Landlord stated that the documentary evidence before me from them was sent to the Tenant by registered mail on June 17, 2022. The Landlord provided me with the registered mail tracking number, which is recorded on the cover page of this decision. The Landlord stated that they know that the Tenants received them as when they attended the property in which the rental unit is located on June 25, 2022, to mow the grass, the Tenant C.N. approached them and slapped them in the face with the documents. With the Landlord's consent, I verified through the Canada Post online tracking system that the registered mail associated with the tracking number provided to me by the Landlord was sent on June 17, 2022, as stated by the Landlord, and delivered on June 22, 2022. Based on the above, and in the absence of any evidence to the contrary, I find that the Tenants were served with the documentary evidence before me from the Landlord on June 22, 2022, and I therefore accept it for consideration. As the only documentary evidence submitted by the Tenants was copies of the three notices to end tenancy, which the Landlord acknowledged they had copies of, I have also accepted the documentary evidence before me from the Tenants for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*?

Background and Evidence

Although a copy was not before me, the Landlord stated that a written tenancy agreement exists. The Landlord stated that the tenancy commenced on October 14, 2020, that it was a fixed term tenancy with an end date of October 15, 2021, that the tenancy continued on a month-to-month basis after the end of the fixed term, and that rent in the amount of \$1650.00 is due on the first day of each month. The Landlord stated that a security deposit in the amount of \$750.00 was required and paid, which they still hold in trust. The Landlord stated that the Tenants have repeatedly paid rent late and that they last paid rent on January 27, 2022, in the amount of \$1,650.00, for the month of January 2022.

The Landlord stated that when the Tenants did not pay rent as required for February, March, and April of 2022, the 10 Day Notice was served. The 10 Day Notice in the documentary evidence before me is on a 2021 version of the form, is signed and dated March 25, 2022, has an effective date of April 5, 2022, and states that \$4950.00 - \$700.00, which the Tenants were permitted to deduct under a previous Residential Tenancy Branch (Branch) Decision on February 7, 2022, was due as of April 1, 2021. The Landlord stated that the 10 Day Notice was attached to the door of the rental unit on March 25, 2022.

The Landlord stated that the Tenants did not pay any rent after the 10 Day Notice was served on them, and currently owe \$9,200.00 in outstanding rent for the period of February 1, 2022 - July 31, 2022 (\$1,650.00 per month, less the \$700.00 one-time rent reduction granted), and that the Tenants did not have a right under the *Act* to the deduct or withhold this rent. The Landlord stated that as the Tenants have not paid rent in six months and there are other significant ongoing issues in the tenancy which have resulted in the issuance of two separate One Month Notices, they wish to end the tenancy as soon as possible. The Landlord also sought authorization to retain the \$750.00 security deposit towards the rent owed.

Although the teleconference remained open during the 40-minute duration of the hearing, no one called in on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

Based on the affirmed and uncontested testimony and documentary evidence before me, I am satisfied that a tenancy to which the applies exists between the parties, and that rent in the amount of \$1,650.00 is due on the first day of each month. I am also satisfied that the Landlord holds a \$750.00 security deposit in trust.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. I accept the Landlord's affirmed and undisputed testimony that the Tenants have not paid rent since January 27, 2022, when they paid \$1,650.00 for January 2022, and that they did not have authority under the *Act* to deduct or withhold rent, except for a one-time deduction on or after February 7, 2022, in the amount of \$700.00, as set out in a previous decision from the Branch on February 7, 2022. The file number associated with that decision has been recorded on the cover page of this decision.

Section 46(1) of the *Act* states that a landlord may end a tendency 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. Subsection 2 of the *Act* states that a notice under this section must comply with section 52 and subsection 3 states that a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the *Act* to deduct from rent. Subsection 4 goes on to say that within five days after receiving a notice under section 46 of the *Act*, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

At the hearing the Landlord testified that the 10 Day Notice was posted to the door of the rental unit on March 25, 2022, and records at the Branch indicate that the Tenants filed the Application seeking cancellation of the 10 Day Notice on March 29, 2022. As a result, and in the absence of any evidence to the contrary, I am satisfied that the Tenants were served with the 10 Day Notice on or before March 29, 2022, and that they therefore filed the Application seeking cancellation of the 10 Day Notice within the

timeline set out under section 46(4) of the *Act*. Based on the documentary evidence before me and the uncontested testimony of the Landlord, I am satisfied that the 10 Day Notice in the documentary evidence before me complies with section 52 of the *Act*, as it is in writing on the approved form, is signed and dated by the Landlord, gives the grounds for ending the tenancy, contains the address of the rental unit, and states the effective date for the notice. Although I have already found above that the Tenants filed the Application seeking cancellation of the 10 Day Notice on time, the Tenants did not attend the hearing or send anyone to provide evidence and testimony on their behalf, and the Landlord provided affirmed and uncontested testimony that the Tenants have not paid rent since January 27, 2022, for the Month of January 2022, and that they did not have a right under the *Act* to deduct or withhold rent, except for the \$700.00 previously referred to above.

Although I find that the 10 Day Notice signed, dated, and served on March 25, 2022, refers to \$1,650.00 in rent for April 2022, not yet due under the tenancy agreement at the time the 10 Day Notice was served, it also refers to \$2,600.00 in rent that was due on or before March 25, 2022, under the tenancy agreement (\$1,650.00 for February, plus \$1,650.00 for March, less \$700.00). As I am satisfied based on the affirmed and uncontested testimony of the Landlord that no amount of rent was paid by the Tenants after the 10 Day Notice was served, I therefore find that the 10 Day Notice was valid, despite the Landlord's miscalculation of the total amount owed in outstanding rent at the time the 10 Day Notice was served.

I therefore find that the Tenants breached section 26 of the *Act* when they failed to pay rent on time and in full as required by their tenancy agreement for February and March of 2022 and that the Landlord therefore has the right to end the tenancy for non-payment of rent pursuant to section 46(1) of the *Act*. As a result, I dismissed the Tenants' application seeking cancellation of the 10 Day Notice without leave to reapply. At the hearing the Landlord stated that they wish to end the tenancy as soon as possible and pursuant to sections 55(1)(b) and of 68(2)(a) of the *Act* I therefore order that the tenancy is ended as of today's date, July 18, 2022, and I grant the Landlord an Order of Possession for the rental unit effective two days after service of the Order of Possession on the Tenants.

Pursuant to section 55(1.1) of the *Act*, I find that the Landlord is also entitled to recovery of \$8,508.06 in unpaid rent, calculated as follows:

- \$8,250.00 for the period of February 1, 2022 – June 30, 2022, calculated at \$1,650.00 per month; plus

- \$958.06 for the period of July 1, 2022 – July 18, 2022, calculated at a per diem rate of \$53.23 ($\$1,650.00/31 \text{ days} = \53.23);
- Less the \$700.00 one-time rent reduction permitted.

The Landlord remains entitled to file a subsequent application for dispute resolution seeking compensation for overholding of the rental unit pursuant to section 57(3) of the *Act*, should they wish to do so, if the Tenants remain in the rental unit after July 18, 2022, and the Landlord suffers a monetary loss as a result.

At the Landlord's request and pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to withhold the \$750.00 security deposit towards the amounts owed by the Tenants for rent. Based on the above and pursuant to section 67 of the *Act*, I therefore grant the Landlord a Monetary Order in the amount of \$7,758.06, and I order the Tenants to pay this amount to the Landlord.

As I have already found above that the tenancy is ended as of today's date because of the 10 Day Notice, I therefore find that it is unnecessary for me to determine the validity or enforceability of either of the One Month Notices.

Conclusion

The Tenants' Application is dismissed in its entirety 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.

Pursuant to section 72(2)(b) of the *Act*, I grant the Landlord authorization to retain the \$750.00 security deposit.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$7,758.06**. 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 Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: July 18, 2022

Residential Tenancy Branch