



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OR-DR MNR-DR**

Introduction

The hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 46 and 55 of the Act; and
- a Monetary Order for unpaid rent pursuant to section 55 of the Act.

The Tenants did not attend this hearing scheduled for 1:00 pm. left the teleconference hearing connection open for the entire hearing, which ended at 1:48 pm, in order to enable the Tenants to call into this teleconference hearing. The Landlord's agent ("KL") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that KL and I were the only ones who had called into this teleconference.

KL testified the Landlord served the NDRP and it's evidence ("NDRP Package") on each of the Tenants in-person on March 4, 2022. Based on the undisputed testimony of KL, I find that the NDRP Package was served on each of the Tenants in accordance with sections 88 and 89 of the Act.

KL stated the Tenants did not serve any evidence on the Landlord for the hearing.

Preliminary Matter – Correction of Landlord’s Name

KL testified the name of the Landlord on the 10 Day Notice is different from the name of the Landlord on the Application because he was unable to get the online dispute resolution application service to accept the correct name of the Landlord. KL requested that I amend the Application to correct the name of the Landlord.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

4.2 Amending an application at the hearing

In circumstances that 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.

The Tenants could have reasonably anticipated the Landlord would request a correction of its name in the Application at the hearing. As such, I amended the Application to correct the name of the Landlord.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- recovery of the unpaid rent?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

KL testified the original tenancy agreement was between one of the respondents (“JT”) and two other tenants (“RS” and “TB”). KL stated RS died in June 2020. KL stated TB occupied the rental unit for about one year and then left without giving notice to end the tenancy. KL stated the second respondent (“CM”) moved into the rental unit and he was

added to the original tenancy agreement. KL submitted into evidence a copy of the tenancy agreement and pointed to the addition of CM on page 1 of the agreement and pointed to CM's signature at the bottom of the last page of the agreement. KL testified the tenancy commenced on September 1, 2003, with a fixed term ending August 31, 2004, with rent of \$1,400.00 payable on the 1st day of each month. KL stated the rent is now \$1,893.00 per month. The Tenants were required to pay a security deposit of \$700.00. KL confirmed that the Landlord is holding the deposit in trust for the Tenants.

KL stated the 10 Day Notice was served on the Tenants in-person on February 11, 2022. KL testified the 10 Day Notice stated the Tenants had rental arrears of \$1,893.00 as of February 1, 2022. KL stated the arrears arose as a result of the Tenants failing to pay the rent for February 2022. KL stated the Tenants did not pay the rent within the five-day dispute period the Tenants had after service of the 10 Day Notice. KM stated the Tenants have not vacated the rental unit.

Analysis

Section 26 of the Act states:

- 26 (1) 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.

The undisputed testimony KL was the Tenants are required to pay \$1,893.00 on the 1st day of each month. The undisputed testimony of KL was the Tenants had rental arrears of \$1,893.00 for February 2022.

Subsection 46(4) of the Act states:

- 46(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 undisputed testimony of KL was the Landlord served the 10 Day Notice on the Tenants in-person February 11, 2022. Pursuant to section 46(4) of the Act, the Tenants had until February 16, 2022, being 5-days after receipt of the 10 Day Notice, to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenants did not pay the rental arrears stated on the 10 Day Notice

within the five-day dispute period. KL stated the Landlord was unaware of the Tenants making an application for dispute resolution to dispute the 10 Day Notice.

Subsection 46(5) of the Act states:

- 46(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.

[emphasis in italics added]

Based on the undisputed testimony of KL, I find the monthly rent is \$1,893.00 per month and the Tenants had rental arrears of \$1,893.00 for February 2022. I find that the 10 Day Notice was issued for a valid reason. I find the Tenants did not make an application for dispute resolution to dispute the 10 Day Notice within 5 days of service of the 10 Day Notice. As such, I find that the Tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being February 21, 2022.

Subsections 55(2), 55(3) and 55(4) of the Act state:

- 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:
- (a) a notice to end the tenancy has been given by the tenant;
 - (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;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.

- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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.*

[emphasis added in italics]

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(4)(a) of the Act, I order that the Tenants provide the Landlord with vacant possession of the rental unit.

The Tenants must compensate the Landlord \$1,893.00 for the unpaid rent. Pursuant to section 55(4)(b) of the Act, I order the Tenants to pay the Landlord \$1,893.00 in satisfaction of the arrears. Pursuant to section 72(2)(b), the Landlords may deduct the Tenants' security deposit of \$700.00 from the rental arrears of \$1,893.00 owed by the Tenants, leaving a balance of \$1,193.00.

As noted above, the tenancy was conclusively deemed to have ended on February 21, 2022. Part B of Residential Tenancy Policy Guideline 3 ("PG 3") states:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a

new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Pursuant to PG 3, the Landlord has the option making an application for dispute resolution to seek compensation from the Tenants for overholding the rental unit after February 21, 2022.

Conclusion

I order the Tenants deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached order by the Landlords. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenants to pay the Landlord \$1,193.00 calculated as follows:

Description	Amount
Rental Arrears	\$1,893.00
Security Credit	\$700.00
Total	\$1,193.00

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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