



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding FORM-ALL HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL, OPU, OPC, MNRL-S, OPN, MNDL-S

Introduction

The landlord seeks orders of possession on a couple of undisputed notices to end tenancy and compensation for unpaid rent and utilities. In addition, the landlord seeks to recover the cost of the application filing fee.

Attending the dispute resolution hearing were the landlord and one of the tenants. The parties were affirmed, and no service issues were raised.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

In this dispute, the tenancy began October 2020 and is currently a month-to-month tenancy. Monthly rent was \$2,500.00, later increasing (in compliance with the permitted increases) to \$2,538.00. There is held in trust a security deposit of \$1,500.00 and a pet damage deposit of \$250.00. A copy of the tenancy agreement was in evidence.

The landlord gave evidence that he issued two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities on March 8, 2022 and again on April 12, 2022. The two notices to end tenancy were served by email and in-person. The outstanding rent owing on the first notice was paid within two days, though the unpaid utilities portion was not.

Neither the outstanding rent or the unpaid utilities owing, and referenced on the second notice, were paid. Neither notice to end tenancy was disputed by the tenants.

The landlord testified that as of August 1, 2022 the tenants owe \$14,846.47. This amount includes both rent arrears and unpaid hydro. The landlord also seeks to recover the cost of the \$100.00 application filing fee. Submitted into evidence by the landlord are various email correspondence between the parties, copies of the notices to end the tenancy, ledgers with amounts for rent and utilities listed, and copies of the hydro bills.

The tenant did not dispute the facts as described by the landlord. She testified that the tenants had \$4,000.00 at one point to give to the landlord but he refused to accept it. (The landlord countered that he never refused to accept the amount, rather, he explained to the tenant that they'd still owe the remainder.) The tenant further testified that she has had a difficult time looking for work and that she was experiencing "anxiety, stress, and all that jazz." She was hesitant to depart the property for fear that the landlord would change the locks or lock the gate. Events over the past year have made the tenants' lives difficult and that it is a struggle; events and personal health issues and have prevented both tenants from finding employment which would give them an ability to pay rent. It is noted that the tenants did not submit any documentary evidence.

Analysis

1. Application for Order of Possession

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month. The tenants are also legally obligated to pay for hydro.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

A tenant who receives a ten-day notice has five days in which they must either pay the entire amount owing or file an application for dispute resolution with the Residential Tenancy Branch. Where a tenant does not dispute a notice, they are deemed to have accepted the validity of the notice to end tenancy (section 46(5) of the Act).

In the case of the second notice issued on April 12, the tenants neither paid the outstanding rent and utilities nor did they make an application for dispute resolution.

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, it is my finding that as the tenants did not make an application to dispute the second notice to end tenancy, as the tenants did not pay the amount owing, and as the 10 Day Notice to End Tenancy for Unpaid Rent dated April 12 complies with section 52 of the Act in form and content, it follows that the landlord is entitled to an order of possession.

A copy of the order of possession is issued to the landlord, in conjunction with this decision. The landlord must serve a copy of the order of possession on the tenants.

While it is not lost on me that the tenants have certainly suffered hardship and difficult circumstance over the past year, the Act does not make allowances for such hardships. Tenants remain legally obligated to fulfil the terms of a tenancy agreement with their landlord, including, most importantly, paying rent and any utilities owing.

2. Claim for Compensation

The landlord gave evidence, which was not disputed by the tenant, that the tenants owe \$14,846.47 in rent arrears and unpaid hydro bills. Taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that he is entitled to the compensation claimed.

3. Claim for Recovery of Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee.

In this dispute, as the landlord succeeded in his application, the tenants are ordered pay the landlord \$100.00.

Retention of Security and Pet Damage Deposits, and Monetary Order

In total, the landlord is awarded \$14,946.47.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. After the tenants vacate the property, the landlord is authorized to retain the tenants' security and pet damage deposits totalling \$1,750.00 in partial satisfaction of the amount awarded.

The balance of the award (\$13,196.47) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord. As with the order of possession, the landlord must serve a copy of the monetary order on the tenants. (The tenants will receive a copy of this decision from the Residential Tenancy Branch, but they will not receive a copy of either order.)

Conclusion

The landlord's application is hereby GRANTED.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: August 5, 2022

Residential Tenancy Branch