Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR, RP, LRE, AS, OLC**
LL: OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the "Act"). The Tenants made one application ("Tenants' Application") for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 6, 2022 (the "10 Day Notice") pursuant to section 46;
- an order requiring the Landlord complete repairs on the rental unit pursuant to section 32;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the Tenants to assign or sublet the rental unit when the Landlord has unreasonably withheld or denied permission pursuant to section 65; and
- an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62.

The Landlord made one application ("Landlord's Application") for:

- an order of possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee of the Landlord's Application from the Tenants pursuant to section 72.

Two agents (“GC” and “GS”) and one of the two Tenants (“LP”) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

GC stated the Landlord served the Notice of Dispute Resolution Proceeding (“NDRP”) on each of the Tenants by registered mail on April 20, 2022. GC submitted the Canada Post tracking numbers for service of the NDRP on each of the Tenants. I find the NDRP was served by the Landlord on each of the Tenants pursuant to section 89 of the Act.

GC stated the Landlord his evidence on each of the Tenants by registered mail on May 5, 2022. GC submitted the Canada Post tracking numbers for service of the Landlord’s evidence on each of the Tenants. I find the Landlord’s evidence was served on each of the Tenants pursuant to section 88 of the Act.

Preliminary Matter – Service of Tenant’s Notice of Dispute Resolution Proceeding and Evidence

LP stated the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding (“Tenants’ NDRP”) and their evidence (collectively the “Tenants’ NDRP Package”) by registered mail but it was returned. LP stated she could not locate the Canada Post receipt for service of the Tenants’ NDRP Package. LP stated the Tenants relied upon the address stated in the 10 Day Notice when they addressed and served the Tenants NDRP Package by registered mail. GC admitted the Landlord moved and he did not provide the Tenants and Residential Tenancy Branch (“RTB”) with a notice of his new address. GC stated the Landlord obtained a courtesy copy of the Tenants’ NDRP but did not receive the Tenants’ evidence.

The Tenants relied upon the address for service stated in the 10 Day Notice to serve the Tenants’ NDRP Package on the Landlord. The Landlord failed to provide the Tenants with his new address for service. I find the Tenants’ NDRP Package was not received by the Landlord as a result of any fault by the Tenants. As such, I find the Landlord was served with the Tenants’ NDRP Package pursuant to sections 88 and 89 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claims

The Tenants' Application included a claim for (i) an order requiring the Landlord complete repairs on the rental unit; (ii) an order to suspend or set conditions on the Landlord's right to enter the rental unit; (iii) an order to allow the Tenants to assign or sublet the rental unit when the Landlord has unreasonably withheld or denied permission; and (iv) an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement (collectively the "Tenants' Other Claims")

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules") states:

> 2.3 **Related issues**
>
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Tenants' Application was whether the tenancy would continue or end based on the 10 Day Notice to end tenancy. Accordingly, I find the Tenants' Other Claims are not sufficiently related to the primary issue of whether the 10 Day Notice is upheld or set aside. Based on the above, I will dismiss the Tenants' Other Claims, with leave to reapply, if I make an order for cancellation of the 10 Day Notice. On the other hand, I will dismiss the Tenants' Other Claims without leave to reapply if I do not cancel the 10 Day Notice and grant the Landlord an Order of Possession as the Tenants' Other Claims will be moot.

Preliminary Matter – Increase in Rental Arrears Claimed by Landlord

During the hearing, GC stated the Tenants now have total rental arrears of $10,600.00 that have accrued through from March through August 2022 inclusive. GC requested that I amend the Landlord's Application to increase the claim for unpaid rent to $10,600.00.

Rule 4.2 of the Rules 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 have continued to occupy the rental unit since the 10 Day Notice was served on them by the Landlord. As such, they could reasonably have anticipated that the Landlord would seek additional rental arrears that have accrued since the date of the 10 day Notice to the date of this hearing. Based on the foregoing, pursuant to Rule 4.2 I order the Landlord's Application to be amended to claim a total of $10,600.00 for rental arrears.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 10 Day Notice?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to recover the unpaid rent?
- Is the Landlord entitled to recover the filing fee of the Landlord's Application from the Tenants?

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 Tenants' Application and the Landlord's Application, and my findings are set out below.

The parties agreed the tenancy commenced on January 1, 2022, on a month-to-month basis, with rent of $2,400.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of $1,200.00 by January 1, 2022. GC stated the Tenants paid the security deposit and confirmed the Landlord was holding it in trust for the Tenants.

GC stated the Landlord served the Tenants with the 10 Day Notice in person on April 6, 2022. LP acknowledged the Tenants received the 10 Day Notice on April 6, 2022. I find the 10 Day Notice was served by the Landlord on the Tenants in person in accordance with the provisions of section 88 of the Act.

GC testified the 10 Day Notice stated the Tenants had rental arrears of $3,400.00 as of April 1, 2022. GC submitted into evidence a copy of the Monetary Order Worksheet ("Worksheet"). GC stated the Tenants now had rental arrears of $10,600.00 for the months of March through August, 2022 calculated as follows:

Date	Owed	Paid	Balance
01-Mar-22	$2,400.00	$0.00	$2,400.00
15-Mar-22		$1,400.00	$1,000.00
01-Apr-22	$2,400.00	$0.00	$3,400.00
10-Apr-22		$2,400.00	$1,000.00
01-May-22	$2,400.00	$0.00	$3,400.00
01-Jun-22	$2,400.00	$0.00	$5,800.00
01-Jul-22	$2,400.00	$0.00	$8,200.00
01-Aug-22	$2,400.00	$0.00	$10,600.00
Total	**$14,400.00**	**$3,800.00**	**$10,600.00**

The 10 Day Notice also stated the Tenants owed $430.00 for unpaid utilities. Although the Landlord provided a Proof of Service on Form RTB-34 for service of a 30 Day Demand to Pay Utilities on the Tenants, the Landlord did not submit a copy of the actual

30 Day Written Demand to Pay Utilities. GC stated the Landlord was waiving the monetary claim for the unpaid utilities.

When I asked, LP admitted that the Tenants did not overpay the Landlord for the security deposit. When I asked whether the Tenants paid additional rent as a result of a non-compliant rent increase, LP stated the Landlord sought to increase the rent to $3,400.00. When I asked for clarification, LP admitted the Tenants did not pay any rent in excess of the $2,400.00 per month stated in the tenancy agreement. When I asked, the Tenant admitted the Tenants have not been granted an order by the Director permitting them to withhold the rent entirely or to pay a lesser amount of rent to the Landlord. I then asked LP if the Tenants had incurred any costs to perform emergency repairs on the rental unit as a result of the Landlord refusing or neglecting to make the emergency repairs after having given the Landlord at least two telephone calls to request such emergency repairs. LP replied in the affirmative and stated that, although the Tenants incurred emergency, the Tenant did not provide any details on the nature of the emergency repairs such as providing invoices to corroborate her testimony regarding the emergency repairs she claimed the Tenants had paid for. LP stated she did not have a device that would last long enough for her to file the evidence with the RTB. LP did not call any witnesses to corroborate her claim that the Tenants had incurred expenses for emergency repairs to the rental unit.

LP stated there was a “high probability” that the $1,000.00 claimed by the Landlord to be owing for the April 2022 rent was not even owed by the Tenants. When I asked if the Tenants submitted evidence to corroborate her statement the Tenants had paid the $1,000.00, LP stated she did not have any evidence because the Landlord does not give receipts for payments. LP did not call any witnesses to corroborate her testimony that the Landlord does not issue receipts for payments. LP stated the Direct Request Worksheet (“Worksheet”) submitted by the Landlord disclosed the Tenants owed $0.00 for April 2022 and, therefore, the Tenants did not owe the Landlord any rent for April as indicated in the 10 Day Notice. Later during the hearing, LP stated she had receipts showing the Tenants paid $1,400.00 for the rent paid by the Tenants in March 2022 and that she could provide those receipts if she was given the opportunity. LP stated it was extremely difficult for the Tenants to pay the rent by e-transfer. LP stated she went to the Landlord’s house and found he had moved.

LP stated the Landlord stopped coming in July 2022 to pick up the rent. LP stated the Landlord moved and, as a result, there was no way for the Tenants to pay the rent. LP stated the Tenants made only one payment for rent e-transfer in April 2022. LP stated that, from day one, it was understood that rent payment would be made by the Tenants

in cash only. LP stated the Landlord made it impossible for the Tenants to pay the rent. LP stated that the Landlord collects the rent from five other houses owns in the area but he does not pick up the rent from the Tenants. LP did not refer to any provisions in the tenancy agreement that stated the Tenants would only be required to pay the rent in cash or that the Landlord would pick up the cash payments to corroborate her testimony.

GC stated the Landlord only accepts e-transfer for rent and does not accept cash from any of his tenants. GC stated the Landlord is elderly and feels uncomfortable taking cash for rent. GC admitted the Tenants paid the security deposit of $1,200.00 in cash, $2,400.00 for the rent for each of January and February 2022 in cash and $1,400.00 in cash for a partial payment of rent on March 15, 2022. GC stated the Tenants made an e-transfer of $2,400.00 on April 10, 2022 for the rent owing on April 1, 2022.

LP stated the Landlord came onto the residential property and she told him not to come back unless he gave the Tenants 24 hours written notice in advance. When I asked, LP stated the Tenants were only renting the upper floor of the house. LP stated the Landlord came onto the residential property and she found him going through her things outside the rental unit and rummaging through her laundry that was located at the bottom of the outer stairs of the house.

GC stated the lower floor of the residential premises is currently vacant because the last tenants moved out as they were afraid of the Tenants. GC stated the Landlord attempted to collect the rent for April and the Tenants threatened him to never come onto the residential property again so it made it virtually impossible for the Landlord to collect the rent.

Analysis

I find it important to note that, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties' testimonies, their content and demeanor, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I find the testimony of GC to be credible, forthcoming and persuasive. I find the testimony of LP to be inconsistent, contradictory and self-serving,

particularly in light of many statements made by LP for which no evidence was submitted, or witnesses called, to corroborate LP's testimony and submissions.

1. Order of Possession

Sections 46 and 53 of the Act state:

> 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]*.
> (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
> (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.

GC testified the Landlord served the 10 Day Notice on the Tenants' door on April 6, 2022. Pursuant to section 90, I find the Tenants were deemed to have received the 10 Day Notice on April 9, 2022. Pursuant to section 46(4), the Tenants had until April 14, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenants made their application on April 7, 2022. Accordingly, the Application was filed with the RTB within the 5-day dispute period required by section 46(4) of the Act

GC testified the 10 Day Notice stated the Tenants had rental arrears of $3,400.00 as of April 1, 2022. GC stated the Tenants did not pay any rent for the months of March through August inclusive and the Tenants now owe the Landlord a total of $10,600.00. GC admitted the Landlord changed his address without advising the Tenants. GC stated an altercation occurred between the Landlord wherein the Tenants threatened him to never return to eh the residential property. GC submitted that, as the Tenants had the Landlord's email address, they had the option of paying the rent as they had done previously on April 10, 2022 to pay $2,400.00 for rent. The Tenant stated the Tenants had told the Landlord not to return to the residential property until he had given them a 24 written notice for access.

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.

Pursuant to section 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. As such, the Act is unequivocal that a tenant has the obligation to pay rent unless one or more of the following limited circumstances exist when a tenant is not required to pay the rent in full as follows:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

LP admitted the Tenants did not overpay the security deposit, had not overpaid the rent pursuant to a non-compliant rent increase and did not have a pre-existing order by the Director to withhold rent or pay less rent. LP stated the Tenants paid for emergency repairs after giving the Landlord two phone calls and the Landlord neglected or refused to perform the repairs. LP did not submit any evidence to corroborate her testimony that the Tenants paid to have emergency repairs performed on the rental unit, such as receipts nor did LP call witnesses to corroborate her testimony regarding the performance of emergency repairs. The Tenants' Application was made on April 7, 2022. This gave the Tenants more than three months to serve on the Landlord, and submit to the RTB, evidence to substantiate LP"s claims that the Tenants made emergency repairs. Furthermore, the submission of evidence of the performance of emergency repairs did not require a working electronic device. Evidence may be submitted to any ServiceBC office in British Columbia or the RTB Office located in Burnaby, BC. . As such, I find on a balance of probabilities, that the Tenants did not perform any emergency repairs on the rental unit and, therefore, were not entitled to withhold any rent from the Landlord as contemplated by section 33(8) of the Act.

LP stated the Tenants were unable to e-transfer the rent to the Landlord because it was too difficult for the Tenants. LP stated that the Landlord collected the rent from other tenants in the area but would not pick up the Tenants' rent. LP stated the Tenants did not have the current address for the Landlord. GC admitted the Landlord moved. LP stated the Landlord had come onto the residential property and she had told him not to come back unless he gave her 24 hours written notice. When I asked, the Tenant verified the Tenants were renting the upper floor of a house. LP stated the Landlord had come onto the property and was rummaging through her things that were located on the common areas of the common property, including the Tenants' laundry, all of which were located outside the rental unit. GC stated the Landlord would not return to the rental property after the Tenants threatened him and to never come back to the residential property. LP stated the Landlord did not come to collect the rent in July 2022 but the Landlord was continuing to collect the rent from the Tenants in five other houses he owned nearby the rental unit.

Section 28 of the Act states:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b)freedom from unreasonable disturbance;
>
> (c) *exclusive possession of the rental unit* subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.
>
> [emphasis in italics added]

Pursuant to section 28 of the Act, a tenant only has the right to exclusive possession of the rental unit. As such, a landlord must serve the tenant with written notice to obtain access to the rental unit. However, when there are two or more rental units on the residential property, and the tenancy agreement is silent on exclusive possession of the areas outside of the rental unit, then the presumption is that the Tenant does not have exclusive possession of the areas outside the rental unit and is limited to those common areas permitted by the Landlord. The tenancy agreement for this tenancy does not give the Tenants exclusive possession of any of the common areas of the residential property. As such, the Landlord has the unfettered right to access the common areas of the residential property without the need to give written notice to the Tenants when the Landlord is only accessing the common areas of the residential property. Where a tenant uses common areas, it must be for reasonable and lawful purposes and in accordance with reasonable conditions set by the Landlord.

In the case of the tenancy agreement between the Landlord and Tenants, the Landlord was entitled to inspect any items the Tenants left on the common areas to verify that those items, such as verifying the items are not dangerous or could attract animals, rodents or insects. Furthermore, the Landlord has the right to impose reasonable conditions on the use of common areas by the Tenants and may restrict the use of part or all the common areas by the Tenants except those areas that are essential to allow access to the rental unit. As such, the Tenants had no right to threaten the Landlord when he came onto the common areas of the residential property over when he was inspecting items left on the common property by the Tenants. I find the Tenants unreasonably threatened the Landlord while he was on the common areas of the residential property. As such I find the Landlord had a reasonable excuse for not returning to the residential property to collect the rent from the Tenants.

LP stated there was a high probability the Tenants paid the remaining $1,000.00 for the rent for April 2022. LP stated that she was unable to provide receipts because the Landlord did not give receipts for payments made by them. However, LP did not call any of the other five tenants in the neighbourhood that she referred during testimony to provide evidence the Landlord did not give receipts for rent paid by tenants. Furthermore, LP contradicted herself later in the hearing when she stated the Tenants paid $1,400.00 towards the rent in April 2022 and that she had receipts for the $1,400.00 payment and could produce those receipts if given the opportunity.

LP stated it was extremely difficult for the Tenants to pay the rent by e-transfer even though they made the payment of $2,400.00 by e-transfer on April 10, 2022. As noted above, the Act is unequivocal that a tenant has the obligation to pay rent. I have found the Tenants threatened the Landlord such that the Landlord would not return to the residential property. Although the Landlord did not provide his new address, the Tenants still had the option of paying the rent by e-transfer. As noted above, LP stated the Tenants had called the Landlord to request emergency repairs be performed on the rental unit. By LP's own admission, the Tenants had the Landlord's phone number and they could have called the Landlord to ask for his new address or, alternatively, make arrangements for an alternative method of payment. The Tenants also had the Landlord email address as evidenced by the e-transfer of $2,400.00 they made to the Landlord on April 10, 2022. As such, the Tenants could have sent an email to the Landlord requesting he contact them so they could make suitable arrangements for payment of the rent. It is not the responsibility of a landlord to pursue a tenant or tenants for payment of rent. Based on the foregoing, I find the Tenants did not take any reasonable steps to contact the Landlord to make alternative arrangements for payment of the rent if they were unable to e-transfer the rent to him for the rent for March and April 1, 2022.

LP stated the Worksheet submitted by the Landlord into evidence disclosed the Tenants did not owe any rent for April 2022 and, as such, the Landlord did not have a valid reason for serving the 10 Day Notice. LP is mistaken. The Worksheet was completed correctly. The Worksheet provided the following information:

- on March 1, 2022, the rent due was $2,400.00;
- on March 15, 2022, the Tenants paid $1,400.00 leaving a balance of $1,000.00
- on April 1, 2022, the rent due was another $2,400.00;
- on April 10, 2022, the Tenants paid $2,400.00 leaving a balance of $0.00 for rent for April 2022;
- Following the statement "Amount listed for unpaid rent on the 10 Day Notice to End Tenancy", it stated $$3,400.00; and
- Following the statement "Amount paid since the 10 Day Notice to End Tenancy was issued", it stated $2,400.00.

As such, the Worksheet provided the exact same information as GC testified to at the hearing. Accordingly, when the 10 Day Notice was issued, it stated the rent owing by the Tenants was $3,400.00 as of April 1, 2022. As the Tenants paid the $2,400.00 by e-transfer on April 10, 2022, it was made after the issuance of the 10 Day Notice. As noted above, the Tenants had until April 14, 2022 to either pay the rent in full or make

an application for dispute resolution to dispute the 10 Day Notice. The Tenants chose to dispute the 10 Day Notice rather than pay the remaining $1,000.00 in rental arrears on or before April 14, 2022.

LP did not submit any evidence the Tenants were entitled to deduct any amounts for emergency repairs, not did LP call any witnesses to corroborate her testimony they had incurred expenses for emergency repairs. As such, I find the Tenants did not have any excuse under the Act to withhold the rent under section 26.1 of the Act.

The Worksheet states “If any rent has been paid since issuing the 10 Day Notice, copies of rent receipts or other evidence of payment should be provided”. The Tenants made a payment of $2,400.00 following the issuance of the 10 Day Notice on April 6, 2022. The Landlord did not submit a receipt for the payment of the $2,400.00 made by the Tenants on April 10, 2022. As such, I must address the issue of whether the acceptance of the payment of $2,400.00 by the Landlord reinstated the tenancy after he issued the 10 Day Notice. LP did not give any testimony, or call any witnesses, or provide any testimony to support a claim the Tenants had an expectation that the Landlord would reinstate the Tenancy or that the Landlord had indicated the tenancy would be reinstated upon the payment of $2,400.00 on April 10, 2022. Furthermore, none of the testimony of GC, or evidence submitted by the Landlord, suggest the Landlord intended to reinstate the tenancy by accepting only $2,400.00 of the $3,600.00 owed by the Tenants. As such, I find, on a balance of probabilities, the Landlord did not reinstate the tenancy by accepting the 10 Day Notice.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenants owed the Landlord $3,400.00 on April 1, 2022, as stated in the 10 Day Notice. As such, I find there was a valid reason for the Landlord serving the Tenants with the 10 Day Notice and there is no basis upon which to cancel the 10 Day Notice. Accordingly, the Tenants’ claim for cancellation of the 10 Day Notice is dismissed without leave to reapply.

Sections 55(1) and 55(1.1) of the Act state:

> 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 to the landlord an order of possession of the rental unit if
>
> (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 reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenants have not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on August 4, 2022.

2. Monetary Order for Unpaid Rent

Based on the testimony of GC and the Worksheet, I find pursuant to section 26(1) of the Act, that the Tenants have rental arrears of $10,600.00 for the months of March through August 2022. The Tenants must compensate the Landlord this amount. Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order the Tenants pay the Landlord $10,600.00 in satisfaction of the rental arrears. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenants' security deposit of $1,200.00 from the rental arrears owed by the Tenants, leaving a balance of $9,400.00.

3. Filing Fee

As the Landlord has been successful in the Landlord's Application, I order the Tenants pay for the Landlord's filing fee of $100.00 pursuant to section 72(1) of the Act

4. Dismissal of Tenants' Application

As I have granted the Landlord an Order of Possession, I dismiss the Tenants' Other Claims without leave to reapply as those claims are now moot. As such I dismiss the Tenants' Application in its entirety without leave to reapply.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

I order that 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 of Possession by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order that the Tenants pay the Landlord $9,500.00 representing the following:

Description	Amount
Rental Arrears	$10,600.00
Filing Fee of Landlord's Application	$100.00
Security and Pet Damage Deposits Credit	-$1,200.00
Total	**$ 9,500.00**

It is the Landlord's obligation to serve this Monetary Order on the Tenants. If the Tenants do not comply with the Monetary Order, it may be filed with 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: August 9, 2022

Residential Tenancy Branch