



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: **MNDCT, MNRT, CNR, RR, OLC, RP, LRE, FFT**
Landlords: **MNR-DR, OPR-DR, FFL**

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;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
4. An Order to be paid back for the cost of emergency repairs that the Tenants made during the tenancy pursuant to Section 67 of the Act;
5. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
6. An Order for repairs made to the unit, site or property. I have contacted the landlord in writing to make repairs but they have not been completed pursuant to Section 32 of Act;
7. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
8. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for a 10 Day Notice pursuant to Sections 46 and 55 of the Act;

2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Assistant, the Tenants and the Tenants' Witnesses, BD and JM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenants with the 10 Day Notice on May 31, 2022 by leaving a copy with the Tenant or with an adult who apparently lives with the Tenant and by posting on the Tenants' door. The Landlord uploaded a witnessed Proof of Service form #RTB-34 attesting to service of the 10 Day Notice. The Tenants did not confirm receipt of the 10 Day Notice, but did say that the Landlord was at the rental unit on May 31, 2022. I find that the 10 Day Notice was deemed served on the Tenants on June 3, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenants testified that they served the Landlords with the Notice of Dispute Resolution Proceeding package for this hearing on April 13, 2022 (the "NoDRP-T package"). I note that the NoDRP-T package was issued to the Tenants by the RTB on May 10, 2022. The Landlords confirmed receipt of the NoDRP-T package. I find that the Landlords were sufficiently served with the NoDRP-T package on May 13, 2022 in accordance with Section 71(2)(b) of the Act.

The RTB issued the Notice of Dispute Resolution Proceeding package to the Landlords on June 21, 2022 (the "NoDRP-L package"). The Landlords stated that they personally served the Tenants with the NoDRP-L package for this hearing; however, they did not remember the date of this service. The Tenants did not confirm receipt of the NoDRP-L package.

RTB Rules of Procedure 3.5 Proof of service required at the dispute resolution hearing states that:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the Landlords have not proven service of their NoDRP-L package and I dismiss their application for non-effective service.

Preliminary Matters

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenants' application, the Tenants named their minor son as a Tenant in the matter, and also included the witness, JM, as a Tenant in this file. The witness, JM, lives in the upstairs unit in the home but is not a Tenant in the tenancy agreement. I asked the Tenants if I could remove their minor son they named in their application, and they agreed. I am also removing witness, JM, as he is not a person included in this tenancy agreement. Witness, JM, provided sworn testimony for the Tenants' claim. The correct Tenants' name is noted in the style of cause of this decision.

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 have amended the Tenants' party name which reflects the two names in the tenancy agreement for this matter.

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice and the claim for recovery of the application filing fee at this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

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 testimony to amend their original application amount from \$1,400.00 to \$5,600.00 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 cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are not successful, are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Are the Tenants entitled to recovery of the application filing fee?

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 Tenants uploaded a complete copy of the tenancy agreement for this matter. The agreement states this tenancy began as a fixed term tenancy on November 1, 2022. All the parties wrote this date where they signed. The tenancy agreement states the fixed term is to end on November 1, 2023. Monthly rent is \$1,400.00 payable on the first day of each month. A security deposit of \$700.00 was collected at the start of the tenancy and the uploaded tenancy agreement from the Tenants state that they paid a pet damage deposit of \$700.00 at the start of the tenancy. The Landlord testified that they still hold the security deposit in trust for the Tenants.

The Landlords served an earlier 10 Day Notice in April 2022, and the Landlord testified that after service of the notice, the Tenants paid the outstanding rent. In the May 31, 2022 notice, the reason why the Landlords were ending the tenancy was because the Tenants owed \$1,400.00 in outstanding rent on May 1, 2022. The effective date of the 10 Day Notice was June 5, 2022.

The Landlords state that the Tenants did not pay rent for May, June, July and August 2022. The Landlords testified that they have not given permission to the Tenants to withhold paying rent for the rental unit. The Landlords also stated that the Tenants do not have an arbitrator's order to withhold rent. The Landlords are seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$5,600.00.

The Tenants testified that they have not paid rent for June, July and August 2022. The Tenants stated they sent an e-transfer to the Landlords, but they refused to accept it. The Tenants did not upload any evidence of e-transfers sent to the Landlords for rent.

The Tenants' witness BD testified that she observed many times that the Tenants tried to pay rent to the Landlords, but they did not accept the payments. BD stated that the Landlords have never come to the house to collect the rent, and she has witnessed the Tenants calling the Landlords many times about repairs and the rent. BD said in the past two months she has witnessed the Tenants attempting to deal with the rent situation at least 20 times.

The upstairs tenant witness, JM, testified that the Landlords would contact him on multiple occasions asking him if the downstairs Tenants were home, and would ask him to get the Tenants to call the Landlords. Often, he was at work, and would tell the Landlords that they would have to wait until he returned home from work. JM was asked if the Landlords have checked for rent in the last couple months, and he stated, "*No, they have not called at all ... for about three months.*"

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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].*
- (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.*
- (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 Tenants were deemed served with the 10 Day Notice on June 3, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Section 53 of the Act permits incorrect effective dates to be automatically changed. I find the correct effective date of the 10 Day Notice is June 10, 2022.

The Tenants applied for dispute resolution on April 27, 2022 which was for an earlier 10 Day Notice that was served in April 2022. The Landlord testified that the Tenants paid the outstanding rent; therefore, that notice was of no effect.

For the May 31, 2022 10 Day Notice, the Tenants had until June 8, 2022 to pay the outstanding rent or dispute the notice. The Tenants did neither. The Landlords testified that the Tenants do not have permission, from the Landlord or an Arbitrator, to withhold rent. I find on a balance of probabilities that the May 31, 2022 10 Day Notice is valid, and I dismiss the Tenants' application to cancel the 10 Day Notice.

I must consider if the Landlords are entitled to an Order of Possession and a Monetary Order for unpaid rent. 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 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 uphold the Landlords' 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 is \$5,600.00. RTB Rules of Procedure 4.2 allows me to amend the Landlords' original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlords are authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlords are not entitled to their application

filing fee as they did not prove effective service of their NoDRP-L package on the Tenants. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$5,600.00
Less security deposit:	-\$700.00
TOTAL OWING:	\$4,900.00

Conclusion

The Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlords 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 Supreme Court of British Columbia.

I grant a Monetary Order to the Landlords in the amount of \$4,900.00. 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: August 30, 2022

Residential Tenancy Branch