



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: FFT, CNR-MT, CNC, OLC, RP, LRE
LL: MNU-DR, OPU-DR, FFL, MNDCL, OPR

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenants applied for:

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 66;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The landlord’s application, reconvened from an *ex parte* Direct Request proceeding, was for:

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67; and

- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The undisputed evidence is that this periodic tenancy began in March 2020 with monthly rent in the amount of \$2,700.00 payable on the first of each month. The tenant is also responsible for paying a portion of the utilities for the rental property.

The landlord submits that the tenants failed to pay rent and utilities as required under the tenancy agreement and they issued a 10 Day Notice dated March 23, 2022

indicating a rental arrear of \$5,400.00 and utility arrear of \$531.91. The parties agree that the 10 Day Notice was served personally on the tenant on March 23, 2022.

The landlord submits that the tenant have not paid the full amount of the arrears, nor have they paid rent for the months of April 2022 to the date of the hearing. The total rent and utility arrear as at the date of the hearing is \$14,658.23. The landlord submitted a tenant ledger, copies of utility bills and correspondence with the tenants as evidence in support of their claim.

The tenant claims they have paid rent in full throughout the tenancy. The tenant did not provide cogent explanation as to why they failed to file an application to dispute the 10 Day Notice for several weeks, citing that there was a long weekend immediately prior to their filing their application. The tenant submitted three pages of what they purport to be a bank statement showing payments made to the landlord up to April 6, 2022.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on March 23, 2022, and filed a notice of dispute application on April 19, 2022, well outside of the 5 day limit under the *Act*.

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

The tenant provided no cogent explanation of the delay in filing their application making some vague reference to a long weekend in April. I find no plausible reason why two statutory holidays occurring in April would have caused the tenant to delay in filing their application to dispute a notice received on March 23, 2022. I find no basis for an extension of time.

Pursuant to section 46(5) I find that the tenant failed to make an application to dispute the 10 Day Notice or pay the rental arrear in full within the statutory timeline and is

therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I accept the undisputed evidence of the landlord that any payments made by the tenant after the effective date of the notice was clearly indicated to be for use and occupancy only and did not reinstate the tenancy.

Accordingly, I find the landlord is entitled to an Order of Possession. As the effective date of the notice has passed I issue an Order enforceable 2 days after service on the tenants.

As the balance of the tenants' application pertain to relief for an ongoing tenancy I find no need to make a finding on this portion of the claim and dismiss it without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find, pursuant to the signed tenancy agreement that the tenants were obligated to pay rent in the amount of \$2,700.00 on the first of each month and a portion of the utilities for the property. I accept the landlord's evidence, supported through their documentary materials including a tenant ledger and utility bills, that the tenants failed to pay as required.

I find the tenant's testimony that they believe there is no arrear to not be supported in the materials and have little air of reality. The tenant made vague reference to payments but their own evidence shows irregular payments prior to April 6, 2022 and no evidence of any payments made after that date.

Under the circumstances, I accept the evidence of the landlord that the total arrear for this tenancy of rent and utilities is \$14,658.23. Accordingly, I issue a monetary award in the landlord's favour for that amount pursuant to section 67 of the *Act*.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenants.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant 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 issue a monetary order in the landlord's favour in the amount of \$14,758.00. 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 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 18, 2022

Residential Tenancy Branch