



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlord: FFL, OPR-DR, MNR-DR
Tenants: CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent or money owed pursuant to section 67.
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that on May 12, 2022, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. The landlord provided the tracking information, including photos of the packages that were sent to both tenants in the landlord's evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with copies of the landlord's application and evidence on May 17, 2022. 5 days after mailing.

The landlord provided undisputed testimony that the tenants were served with the 10 Day Notice through multiple methods, including email, registered mail, and by posting the Notice on the tenants' door. I am satisfied that the tenants were served with the 10 Day Notice dated April 21, 2022.

Although the landlord had applied for a monetary Order of \$1,399.00 in their initial claim for unpaid rent, since they applied another \$5,596.00 in rent has become owing that was not included in the original application. 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. On this basis, I have accepted the landlord's request to amend their original application from \$1,399.00 to \$6,995.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 9, 2021, with monthly rent currently set at \$1,399.00, payable on the 20th day of each month. The landlord still holds a security and pet damage deposit of \$699.50 each deposit.

The landlords served the tenants with a 10 Day Notice on April 21, 2022 for failing to pay the April 2022 rent by April 20, 2022. The landlord testified in the hearing that the tenants have not paid any rent since being served with the 10 Day Notice. The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent. The landlord also filed a claim for damage to the rental unit.

Analysis

Section 55(1) of the *Act* reads as follows:

- 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.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, May 4, 2022. As the tenants have not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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 landlord provided undisputed evidence in the hearing that the tenants failed to pay the rent in full for the months of April 2022 through to August 2022. Therefore, I find that the landlords are entitled to \$6,995.00 in arrears for the above period.

The landlord is also seeking compensation for damage to the rental unit. Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenants have yet to vacate the rental unit, and the specific damage has yet to be determined, I dismiss this portion of the landlord's application with leave to reapply.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security and pet damage deposit in partial satisfaction of the monetary awards.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 issue a \$5,696.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee.

| Item | Amount |
|--|------------|
| Unpaid Rent for April 2022-August 2022 | \$6,995.00 |
| Recovery of Filing Fee | 100.00 |
| Less deposits held | -1,399.00 |

| | |
|-----------------------------|-------------------|
| Total Monetary Order | \$5,696.00 |
|-----------------------------|-------------------|

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's application for compensation related to damage is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: September 02, 2022

Residential Tenancy Branch