



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on May 4, 2022. The Tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 30, 2022 (the 10 Day Notice), pursuant to the Residential Tenancy Act (the Act).

The Tenants attended the hearing and were assisted by CD and NM, advocates. The Tenants also had a witness present, DM, who was not called upon to give evidence during the hearing. The Landlord attended the hearing on his own behalf. All those giving evidence provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on May 16, 2022. The Landlord acknowledged receipt on May 18, 2022.

The Landlord testified the evidence he intended to rely upon was served on the Tenants by leaving a copy attached to the Tenants' door on September 1, 2022, the same day it was uploaded to the Residential Tenancy Branch Dispute Management System. HRL testified they did not receive the Landlord's evidence. However, during the hearing, the Landlord confirmed that the evidence consisted primarily of text messages between the parties and receipts for rent paid which the Tenants stated during the hearing were submitted to the government agency. Therefore, I find the Tenants were in possession of the documents relied upon by the Landlord and that there is no prejudice in considering them.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order an order cancelling the 10 Day Notice?
2. Is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?
3. Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

The parties agreed the tenancy began on August 1, 2021. Rent of \$1,300.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$650.00, which the Landlord holds. The terms of the tenancy were supported by a Shelter Information form signed by the Landlord and dated August 1, 2021.

The Landlord testified the 10 Day Notice was served on the Tenants on April 30, 2022 by giving a copy to HRL. However, HRL testified that it was not served personally by the Landlord and that it was given to another individual in the rental unit. The Tenant's application suggests it was given to a friend who answered the door. In any event, HRL confirmed receipt of the 10 Day Notice on April 30, 2022.

The 10 Day Notice submitted into evidence is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The 10 Day Notice states that rent of \$1,300.00 was not paid when due on April 1, 2022. The Landlord testified that the Tenants have not paid rent when due as follows:

Rent due date	Amount due	Paid	Outstanding
Apr. 1/22	\$1,300.00	\$0	\$1,300.00
May 1/22	\$1,300.00	\$1,000.00	\$300.00
Jun. 1/22	\$1,300.00	\$350.00	\$950.00
Jul. 1/22	\$1,300.00	\$0	\$1,300.00
Aug. 1/22	\$1,300.00	\$0	\$1,300.00
Sep. 1/22	\$1,300.00	\$0	\$1,300.00
TOTAL:	\$7,800.00	\$1,350.00	\$6,450.00

In support, the Landlord submitted text messages in which the Landlord reminds the Tenants of their obligation to pay rent, including text messages dated March 28, April 12, April 27, April 28, April 30, May 5, May 9, and July 1, 2022. For example, a text message dated May 9, 2022, states:

Hi [HRL], you haven't paid rent for April and May, this is causing me problems with my payments; your rent payment is [sic] will solve my payment problems. Call me.

Further, a text message dated July 1, 2022 states, in part:

Taxes due on July 4, still I have no money for that. You still owe almost full rent for June and now July has started.

Receipts showing the partial payments of rent for the months of May and June were also submitted into evidence by the Landlord.

In reply, the Tenants testified that \$300.00 was retained from rent due on April 1, 2022. This amount was withheld in reliance on an alleged verbal agreement relating to bathroom and hood fan repairs in the rental unit. The Tenants did not submit documentary evidence in support of such an agreement and the agreement was denied by the Landlord.

The Tenants also testified that rent was paid in full for May and June 2022, but acknowledged that rent was not paid when due on July 1, August 1, and September 1, 2022. The Tenants also testified that the Landlord arbitrarily increased rent although the amount of rent to be paid is stated clearly on the Shelter Information form submitted into evidence. In addition, the Tenants testified that the Landlord trespasses without consent and that there are issues with utilities.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the Act confirms a tenant must pay rent when due 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 permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due.

In this case, I find the 10 Day Notice was served on and received by the Tenants on April 30, 2022, and that the Tenants disputed it on time in accordance with section 46(4) of the Act. I also find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

With respect to unpaid rent, I accept the testimony of the Landlord who testified that the Tenants have not paid rent when due and that \$6,450.00 remains unpaid. The Landlord's testimony was supported by text messages and rent payment receipts which corroborated the Landlord's version of events. The Tenants also acknowledged during the hearing that rent had been withheld but did not provide any documentary evidence in support of the alleged agreement.

Accordingly, I find the Tenants have not paid rent when due in accordance with the Act. Therefore, the Tenants' request to cancel the 10 Day notice is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. As I have found that the Tenants' application to cancel the 10 Day Notice is dismissed and that the 10 Day Notice complies with the form and content requirements of the Act, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenants.

In addition, section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring payment of the unpaid rent. As I have found that the Tenants' application to cancel the 10 Day Notice is dismissed and that the 10 Day Notice complies with the form and content requirements of the Act, I grant the Landlord a monetary order for unpaid rent in the amount of \$6,450.00.

Conclusion

The Tenants' request for an order cancelling the 10 Day Notice is dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

By operation of section 55(1.1) of the Act, the Landlord is granted a monetary order for unpaid rent in the amount of \$6,450.00. The monetary order must be served on the Tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2022

Residential Tenancy Branch