



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNR, RP, MNDCT, OLC
Landlord: OPU-DR, MNU-DR, FFL

Introduction and Procedural History

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

On May 7, 2022, the tenants filed for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 1, 2022 (the 10 Day Notice);
- an order for repairs made to the unit, having contacted the landlord in writing;
- compensation for monetary loss or other money owed; and
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

On May 16, 2022, the landlord applied for:

- an order of possession, having served the 10 Day Notice;
- a monetary order of rent and/or utilities not paid in the required time, having served the 10 Day Notice; and
- the filing fee.

This hearing was reconvened after being adjourned on September 23, 2022. This decision should be read in conjunction with the Interim Decision issued on September 23, 2022.

The reconvened hearing was attended by the tenants, the owner, and the owner's agent ("the landlord"), who were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he received the tenants' Notice of Dispute Resolution Proceeding (NDRP), but not their evidence – only one piece of paper which he could not read as it was partially cut off. The tenants testified that their friend handed the landlord their NDRP and evidence on or around June 3, 2022, but provided no proof of service, as required by Rule 3.5. Therefore, I find the tenants did not serve their evidence on the landlord in accordance with section 89 of the Act, and I will not consider it in my decision.

The tenants testified they did not receive the landlord's NDRP and evidence. The landlord testified they served the NDRP on June 1, 2022 by registered mail, and provided a tracking number as noted on the cover page of the decision. The landlord testified they served their evidence on the tenants by registered mail in two packages, sent on August 31, 2022, and provided tracking numbers as noted on the cover page. I find the landlord's NDRP and evidence served on the tenants in accordance with section 89 of the Act, and deem the NDRP received on June 6, 2022 and the evidence received on September 5, 2022, pursuant to section 90 of the Act.

Preliminary Matters

Related Issues

Rule of Procedure 2.3 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.

As they are not related to the central issue of whether the tenancy will end due to unpaid rent and utilities, I dismiss, with leave to reapply, the tenants' application for an order for repairs made to the unit, having contacted the landlord in writing; for compensation for monetary loss or other money owed; and for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

Witness Testimony

As I was concluding the hearing, the tenants presented a witness. In accordance with Rule 3.6, I declined to hear the witness, as when I asked the tenants how the witness's testimony would be relevant, the subject matter did not directly relate to the payment of rent and utilities.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent and/or utilities?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began August 1, 2021; rent at the beginning of the tenancy was \$2,400.00, and is due on the first of the month; and the tenants paid a security deposit of \$1,200.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated May 1, 2022, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenants failed to pay rent in the amount of \$13,320.00 due on May 1, 2022, and utilities in the amount of \$261.92 following written demand on May 1, 2022.

The landlord testified the 10 Day Notice was served on the tenants by placing it in the mailbox on May 1, 2022. The tenants testified they thought they received the Notice on May 3, 2022.

The landlord submitted as evidence a demand letter dated May 1, 2022, which states that \$261.92 is due for hydro for September 2021 through January 2022, and that the

bills, also submitted as evidence, are attached. The first bill references service from July 17, 2021 to September 16, 2021, and is for \$150.23; the second bill is for service from September 17, 2021 to November 17, 2021, and is for \$126.93. The two bills total \$277.16 (\$150.23 + \$126.93).

I advised the landlord that as the demand letter was dated May 1, 2022, the same date as the Notice, it was premature to include the utilities on the 10 Day Notice. The landlord testified they provided the tenants with a written demand letter for \$277.16 in utilities on November 25, 2021, and submitted a copy as evidence. The demand letter states that hydro bills are attached for September 2021 through November 2021, but the bills were not submitted with the demand letter and were not presented as evidence.

The tenancy agreement, submitted as evidence, states "Tenant pays 100% utilities."

The tenants testified they were never given a utilities bill prior to receiving the landlord's evidence package. The landlord testified he would take photos of the bills and send them to the tenants.

The landlord testified that the rent was renegotiated to \$1,800.00 effective January 2022.

The landlord testified that the tenants now owe outstanding rent as follows:

Month	Rent payable	Total rent paid	Monthly outstanding	Cumulative total
November 2021	\$2,400.00	\$0.00	\$2,400.00	\$2,400.00
December 2021	\$2,400.00	\$1,750.00	\$650.00	\$3,050.00
January 2022	\$1,800.00	\$1,730.00	\$70.00	\$3,120.00
February 2022	\$1,800.00	\$0.00	\$1,800.00	\$4,920.00
March 2022	\$1,800.00	\$0.00	\$1,800.00	\$6,720.00
April 2022	\$1,800.00	\$0.00	\$1,800.00	\$8,520.00
May 2022	\$1,800.00	\$0.00	\$1,800.00	\$10,320.00
June 2022	\$1,800.00	\$0.00	\$1,800.00	\$12,120.00
July 2022	\$1,800.00	\$0.00	\$1,800.00	\$13,920.00
August 2022	\$1,800.00	\$0.00	\$1,800.00	\$15,720.00
September 2022	\$1,800.00	\$0.00	\$1,800.00	\$17,520.00

The monthly outstanding and cumulative total amounts in the table above are calculated based on the landlord's testimony on rent payments.

The landlord submitted as evidence a Monetary Order Worksheet which supports their above testimony on rent owing. The landlord's written submission, dated August 25, 2022, states that the parties renegotiated the rent from \$2,400.00 to \$1,800.00 because one of the tenants moved out in December 2021. The landlord has also submitted as evidence a text exchange dated March 31, in which he messages tenant SH, stating that the tenants paid \$2,200.00 in October, \$1,750.00 in December, \$1,730.00 in January, and that is all the rent the tenants paid since October 2021.

The landlord also submitted as evidence a summary of rent payable and received, which supports the landlord's testimony on rent owing and paid, as summarized in the table above.

Tenant CM testified that their roommate moved out in November 2021, and that the rent beginning that month was renegotiated to \$1,750.00, which they paid.

Tenant CM testified they paid rent as follows:

Month	Rent payable	Total rent paid	Monthly outstanding	Cumulative total
November 2021	\$1,750.00	\$1,750.00	\$0.00	\$0.00
December 2021	\$1,750.00	\$1,750.00	\$0.00	\$0.00
January 2022	\$1,750.00	\$1,750.00	\$0.00	\$0.00
February 2022	\$1,750.00	\$0.00	\$1,750.00	\$1,750.00
March 2022	\$1,750.00	\$0.00	\$1,750.00	\$3,500.00
April 2022	\$1,750.00	\$0.00	\$1,750.00	\$5,250.00
May 2022	\$1,750.00	\$0.00	\$1,750.00	\$7,000.00
June 2022	\$1,750.00	\$0.00	\$1,750.00	\$8,750.00
July 2022	\$1,750.00	\$0.00	\$1,750.00	\$10,500.00
August 2022	\$1,750.00	\$0.00	\$1,750.00	\$12,250.00
September 2022	\$1,750.00	\$0.00	\$1,750.00	\$14,000.00

The monthly outstanding and cumulative total amounts in the table above are calculated based on the landlord's testimony on rent payments.

Tenant CM testified that the landlord started refusing their rent in February 2022; CM testified that the landlord refused to visit the rental as he usually did to collect the rent. CM testified that sometimes they paid rent in cash, and sometimes by e-transfer. CM testified that when the landlord failed to pick up the rent in person, the tenants did not pay the rent by e-transfer.

The landlord testified that with the exception of the first month, the tenants always paid rent by e-transfer, not in cash.

Tenant CM testified that in April or March [2022] the owner came to the rental, the tenants offered to go to the bank for the rent, but the owner refused, instead offering the tenants \$2,000.00 to move out.

Tenant CM provided testimony on the landlord failing to do repairs, wanting to tear down the rental unit, and turning off the gas and water.

Analysis

Based on the testimony of the parties, I find the 10 Day Notice was served on the tenants on May 1, 2022, in accordance with section 88 of the Act, and that it was received by the tenants on May 3, 2022.

I find that the 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the Notice, states the reason for ending the tenancy, and is in the approved form. The May 1, 2022 Notice was served prematurely with respect to the May 2022 rent, because tenants have all day to pay the rent on the day it is due. However, I find the Notice is effective because the position of the landlord is that additional rent is owing from previous months.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement.

Section 46(6) states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As the parties agree that the tenants did not pay rent for February through September, 2022, I dismiss the tenants' application for an order cancelling the 10 Day Notice, and uphold the landlord's Notice. I find that the landlord is entitled to an order of possession in accordance with section 55.

Regarding the amount of rent owing, the parties agree that the rent was renegotiated to a lesser amount, but disagree on what the new amount was. The landlord testified that the rent was renegotiated to \$1,800.00, effective January 2022. Tenant CM testified that the parties agreed that rent would be \$1,750.00 beginning in November 2021.

The landlord has submitted as evidence a text exchange with tenant SH, in which he refers to incomplete rent payments from the tenants, and states that the tenants paid \$1,750.00 in December 2021. I find that had the parties agreed that rent would be \$1,750.00 beginning November 2021, the landlord would not have mentioned the December rent payment of \$1,750.00 as an issue in his text.

Considering the foregoing, I favour the landlord's affirmed testimony and documentary evidence on unpaid rent over that of the tenant's, and find, on a balance of probabilities, that the landlord is entitled to \$17,520.00 in unpaid rent.

Regarding utilities, the landlord's May 1, 2022 demand letter is premature, given the requirement of section 46(6) of that Act that requires a landlord to allow 30 days from the service of a written demand for utilities before including them on a 10 Day Notice.

The landlord testified he served a previous written demand for utilities on November 25, 2021, which is submitted as evidence. However, the landlord has failed to present evidence as to how he came to the \$277.16 noted on the demand letter. The November demand letter appears to reference the same two bills accompanying the May demand letter, totaling \$277.16, but they cover service for a period beyond the months indicated in the November demand letter.

Therefore, I find the landlord is not entitled to recover unpaid utilities.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is mostly successful in their application, I order the tenants to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenants' \$1,200.00 security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$17,520.00
Filing fee	\$100.00
Security deposit	-\$1,200.00
Owed to Landlord	\$16,420.00

Conclusion

The tenants' application is dismissed.

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 and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$16,420.00.

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: October 03, 2022

Residential Tenancy Branch