



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, CNR, LRE, OLC, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants September 07, 2022 (the “Application”). The Tenants applied as follows:

- To reduce rent for repairs, services or facilities agreed upon but not provided
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated September 02, 2022 (the “Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing with J.B. and A.B. as their representatives (the “Landlords”). The Landlords called R.L. as a witness at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and R.L. provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenants at the outset of the hearing that I would consider the dispute of the Notice and request to recover the filing fee but dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted by the Tenants. The Tenants acknowledged signing the written tenancy agreement. The tenancy started August 01, 2022, and is for a fixed term ending July 31, 2023. Rent in the agreement is \$3,850.00 per month due by the first day of each month. There is an addendum to the tenancy agreement.

The Tenants testified that the parties had a verbal agreement that rent would be \$3,700.00, not \$3,850.00. The only documentary evidence the Tenants relied on for this position is a text message in which they tell the Landlords they e-transferred half the rent, being \$1,850.00.

The Landlords agreed the parties discussed reducing rent; however, the Landlords testified that it was ultimately agreed that the Tenants would pay \$3,850.00.

The Notice was submitted. The Notice states the Tenants failed to pay \$3,850.00 due on August 01 and September 01, 2022. The Notice has an effective date of September 12, 2022.

The parties agreed the Notice was served on the Tenants in person September 02, 2022.

The parties agreed the Tenants paid \$3,700.00 in rent for August and September of 2022.

The Landlords maintained that rent is \$3,850.00 per month and therefore the Tenants owed \$300.00 in rent when the Notice was issued. The Landlords testified that the next rent payment made after the Notice was issued was \$3,700.00 on October 01, 2022. The Landlords testified that the Tenants had no authority under the *Act* to withhold rent.

The Tenants maintained that rent is \$3,700.00 per month pursuant to a verbal agreement between the parties. The Tenants testified that the next rent payment made after the Notice was issued was \$1,850.00 on September 30, 2022, and \$1,850.00 on October 01, 2022.

In relation to disputing the Notice, the Tenants submitted that their only options were to pay the amount on the Notice, \$3,850.00, or dispute the Notice and therefore they disputed the Notice because they do not owe \$3,850.00 in rent.

In response to the Tenants' position that they had to pay \$3,850.00 or dispute the Notice, the Landlords testified that they sent the Tenants a text August 24, 2022, telling the Tenants they owe \$150.00 in rent. The Landlords testified that they sent another text September 05, 2022, telling the Tenants they owe \$300.00 in rent. The Landlords submitted that the Tenants knew what rent was outstanding.

I asked the Tenants why they signed the written tenancy agreement showing rent is \$3,850.00 if rent was actually \$3,700.00. The Tenants testified that the parties had a verbal agreement that the Tenants would pay \$3,700.00 until the Landlords emptied the garage of the rental unit at which point the Tenants would pay \$3,850.00. The Tenants mentioned the Landlords reneging on their agreement and the Tenants having to sign the written tenancy agreement because they had already made arrangements to move and live in the rental unit. The Tenants testified that in the circumstances, they signed the written tenancy agreement.

The Landlords called R.L. as a witness. R.L. testified that they overheard a telephone conversation on August 08, 2022, between the Tenants and Landlords about rent. R.L. testified that the Landlords told the Tenants they were \$150.00 short on rent, there was some back and forth about this, and the Tenants eventually agreed to pay the \$150.00. R.L. acknowledged they do not recall the conversation word for word; however, testified that the point of the conversation was that the Tenants had not paid rent in full, and the Tenants agreed to do so. R.L. agreed with the Tenants' suggestion that the Tenants told J.B. that the further \$150.00 in rent was not what they had agreed to.

The Tenants agreed they had the conversation described by R.L. with the Landlords August 08, 2022; however, disagreed that they eventually agreed to pay the Landlords a further \$150.00.

The Landlords testified that \$450.00 in rent is currently outstanding up until the end of October. The Landlords sought a Monetary Order for outstanding rent and an Order of Possession for October 31, 2022.

The Tenants testified that no rent is outstanding because rent is \$3,700.00 and they have paid this each month.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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...

(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...

(emphasis added)

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*)
2. When section 33 of the *Act* in relation to emergency repairs applies
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*)
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*)
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*)
6. When the landlord consents to the tenants withholding rent

The parties disagreed about whether rent is \$3,700.00 or \$3,850.00 per month. I accept that rent is \$3,850.00 per month because this is what the written tenancy agreement states. Nothing in the written tenancy agreement supports the Tenants' position that rent is \$3,700.00. The Tenants testified that the parties had a verbal agreement about rent being \$3,700.00; however, the Landlords denied this and there is no compelling evidence before me to support this. The only evidence the Tenants pointed to in support of their testimony was a text message authored by themselves in which they told the Landlords they transferred half the month's rent. This text message is not compelling evidence that the parties agreed rent would be \$3,700.00 because there is no indication in the Landlords' reply that they agree the Tenants have now paid half the month's rent. The text message is simply the Tenants stating something that is not agreed to by the Landlords and not supported by any other documentary evidence. I find it unlikely that the Tenants would sign the written tenancy agreement stating rent is \$3,850.00 if it was in fact \$3,700.00. I find it unlikely that there would be no documentary evidence in which the Landlords agreed to the Tenants paying \$3,700.00 if this was the agreement given the critical importance of paying rent, and the rent amount, in a tenancy. On the above basis alone, I find rent is \$3,850.00. However, I also note that the Landlords called R.L. as a witness in support of their position.

I acknowledge that there is evidence before me that the Tenants only wanted to pay \$3,700.00 in rent per month. However, I find the agreement was at all times that the Tenants would pay \$3,850.00 in rent per month as stated in the written tenancy agreement.

I accept that the Tenants only paid \$3,700.00 in rent for August and September of 2022 because the parties agreed on this. I find the Tenants were required to pay \$3,850.00 in rent pursuant to section 26(1) of the *Act*. Further, I find section 46(3) of the *Act* does not apply because the Tenants have not pointed to any authority under the *Act* to withhold \$150.00 in rent each month.

Given the Tenants had not paid \$300.00 of rent owing as of September 01, 2022, the Landlord was entitled to issue the Notice September 02, 2022, pursuant to section 46(1) of the *Act*.

There is no issue that the Notice was served on the Tenants, and received, September 02, 2022.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the Notice states the Tenants failed to pay \$3,850.00 in rent for each of August and September 2022. Pursuant to section 68 of the *Act*, I can amend the Notice as follows:

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

I do amend the Notice to indicate that the Tenants failed to pay \$300.00 as of September 01, 2022. The documentary evidence shows the Landlords sent the Tenants a text message August 24, 2022, about the \$150.00 in rent owing. The documentary evidence shows the Landlords sent the Tenants a second text message September 05, 2022, stating that \$300.00 in rent was outstanding. I find from the documentary evidence, testimony of the parties and testimony of R.L. that the issue

between the parties was clearly whether rent was \$3,700.00 or \$3,850.00. I do not accept that the Tenants could have misunderstood this. Further, the Tenants were outright told what rent was outstanding August 24 and September 05, 2022, once prior to the Notice being issued and once after the Notice was issued but prior to the deadline for paying or disputing the Notice.

I also note that a 10 Day Notice to End Tenancy for Unpaid Rent is valid as long as there was some rent outstanding when it was issued.

The Tenants had five days from receipt of the Notice on September 02, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*. This means the Tenants had until September 07, 2022, to pay the outstanding rent or dispute the Notice. I note again that the Landlords told the Tenants September 05, 2022, that the amount outstanding was \$300.00. I also note that section 46(4) of the *Act* did not require the Tenants to pay \$3,850.00, it required the Tenants to pay **the overdue rent**. Therefore, the Tenants were required to pay the \$300.00 owing, as told to them by the Landlords September 05, 2022. I find the Tenants did not pay the \$300.00 owing by September 07, 2022, because the Tenants acknowledged their next rent payment was made September 30, 2022.

The Tenants did dispute the Notice in time. However, the Tenants have not provided a valid basis for disputing the Notice. As stated, I do not accept the Tenants' position that rent is \$3,700.00. Further, it is not accurate that the Tenants' only options were to pay \$3,850.00 or dispute the Notice. The Tenants were required to pay \$300.00, as told to them by the Landlords September 05, 2022, or dispute the Notice if they had a valid basis to dispute the Notice such as authority under the *Act* to withhold rent. In the circumstances, I dismiss the Tenants' dispute of the Notice without leave to re-apply.

Section 55 of the *Act* states:

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...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.

Pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on October 31, 2022.

Given the above, I accept that there is \$450.00 in rent outstanding up to the end of October and I issue the Landlord a Monetary Order in this amount pursuant to section 55(1.1) of the *Act*.

Given the Tenants have not been successful on the Application, the Tenants are not entitled to recover the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on October 31, 2022. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$450.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) 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: October 25, 2022

Residential Tenancy Branch