



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNR OPR-DR MNRL

Introduction

The landlords seek an order of possession on a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) and a monetary order for unpaid rent under the *Residential Tenancy Act* (the “Act”). The landlords’ application was amended in the hearing to include an additional claim for recovery of the \$100.00 application filing fee. By way of cross-application the tenants sought an order to cancel the Notice.

An arbitration hearing was convened by teleconference on November 21, 2022 at 9:30 AM. Only the landlords attended the hearing, which ended at 9:40 AM.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order?

Background and Evidence

The tenancy began on April 1, 2022 and monthly rent, which is due on the first day of the month, is \$2,650.00. The tenants paid a \$1,325.00 security deposit. There is a copy of a written tenancy agreement in evidence.

On June 26, 2022, the landlords served the Notice on the tenants by way of pre-agreed email. The Notice, a copy of which is in evidence, indicated that \$825.00 of April’s rent was still owing as of June 24, 2022. The landlord (H.L.) testified under oath that the tenants have never paid this amount. Nor, it appears, have the tenants paid any rent for July, August, September, October, and November 2022.

The tenants now owe \$14,075.00 in rent arrears. The landlord expressed concern over how she will make mortgage payments given the tenants’ delinquency in paying rent.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

In this case, monthly rent is \$2,650.00 and this is due on the first day of the month. The landlords' evidence is that the tenants did not pay the full rent that was due on April 1, 2022. Nor have the tenants paid any rent since the landlords gave them the Notice. On a balance of probabilities, it is my finding that the Notice was issued on a valid ground pursuant to section 46(1) of the Act.

Section 52 of the Act states that

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under [section 45.1](#) [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with [section 45.2](#) [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Having reviewed the Notice it is my conclusion that the Notice complies with section 52 of the Act.

Taking into consideration all of the undisputed, affirmed oral and documentary evidence before me, it is my finding that the Notice be upheld and that the tenants' application to cancel the Notice be dismissed without leave to reapply.

Section 55(1) of the Act states that

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.

Having found that the Notice complies with section 52 of the Act, having dismissed the tenants' application to cancel the Notice, and having upheld the Notice, the landlords are granted an order of possession of the rental unit.

A copy of the order of possession is issued with this Decision to the landlords. The landlords must serve a copy of the order of possession on the tenants.

The tenants are ordered to vacate the rental unit within 2 days after being served with the order of possession. The order of possession is enforceable in the Supreme Court of British Columbia and the tenants are liable for any related court enforcement and bailiff costs, should enforcement be necessary

Section 55(1.1) of the Act states that

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.

As the tenants' application is in relation to the Notice issued under section 46 of the Act, and as the circumstances referred to in subsection (1) (a) and (b) of this section apply, I hereby grant an order requiring the payment of the unpaid rent and utilities in the amount of \$14,075.00.

The landlords were successful in upholding the Notice and they are entitled to recover the cost of the application filing fee of \$100.00. In total the landlords are awarded \$14,175.00.

Pursuant to section 38(4)(b) of the Act the landlords are authorized to retain the tenants' \$1,325.00 security deposit in partial satisfaction of the above-noted award.

The balance of the amount owing, \$12,850.00, is issued in a monetary order. A monetary order is issued with this Decision to the landlords and the landlords must serve a copy of the monetary order upon the tenants. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. the tenants' application is dismissed, without leave to reapply.**
- 2. the landlords are granted an order of possession of the rental unit.**
- 3. the landlords are granted a monetary order.**
- 4. the landlords are ordered to retain the security deposit.**

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: November 21, 2022

Residential Tenancy Branch