



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, LAT, OLC, FFT  
                              OPU-DR, MNU-DR

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order permitting the tenants to change the locks to the rental unit; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. The landlord has applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid utilities, which was referred to this participatory hearing, joined to be heard with the tenants' application.

The landlord and an agent for the landlord attended the hearing and each gave affirmed testimony. Both tenants named in the landlord's application also attended and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I amended the tenant's application to indicate that both tenants have made the application, rather than one tenant being named twice. No one opposed the amendment, and the frontal page of this Decision reflects that amendment.

Neither party has provided the other with any of the evidentiary material that has been uploaded to the Residential Tenancy Branch automated system. Any evidence that a party wishes to rely on must be provided to the other party, even if the other party already has a copy. It is important that each party is aware of what evidence I have

received. Since neither party has complied, I decline to consider any of the evidentiary material.

#### Issue(s) to be Decided

- Has the landlord established that a notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Have the tenants established that the tenants should be permitted to change the locks to the rental unit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to ending the tenancy and unlawful entry?

#### Background and Evidence

**The landlord's agent** testified that this tenancy began as a 1 year fixed term about 4 years ago, which reverted to a month-to-month tenancy and one of the tenants still resides in the rental unit; the other one (EF) moved out about 6 months ago. Rent in the amount of \$1,350.00 was payable on the 1<sup>st</sup> day of each month and the tenants are responsible for all utilities. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$675.00.

However, the tenants had trouble paying the rent so the landlord reduced it to \$1,000.00 per month about a year and a half ago, on the condition that rent be paid on time. Currently the tenants are in arrears of rent the sum of \$9,630.00, and the landlord applied the \$675.00 security deposit to rent, so the sum of \$8,955.00 is outstanding.

The tenants made the following rental payments:

- \$300.00 in September, 2021;
- \$1,100.00 in October, 2021;
- no rent was paid for November, 2021;
- \$100.00 was paid on Dec 6 and another \$200.00 on December 15, 2021;
- \$750.00 was paid for January, 2022;
- \$1,000.00 was paid in February, 2022;

- no rent was paid for March, 2022;
- \$800.00 was paid for April, 2022;
- \$400.00 was paid for May, 2022;
- \$500.00 was paid in June, 2022;
- \$720.00 was paid in July, 2022; and
- no rent has been paid for August, September or October, 2022.

The landlord's agent further testified that water bills were given to the tenant (EF), but the bills were paid by the landlord to prevent the water from being cut off. That was last year in August or September.

The tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was personally served to the tenant (DB) on September 9, 2022. The landlord's agent does not know what the reason for ending the tenancy said in the Notice, and believes it contained an effective date of vacancy of sometime in August, which may be a mistake.

The tenants had asked that the landlord's agent attend to assess a leak in the roof due to a fire in a bedroom in the rental unit on November 29, 2020. The landlord's agent assessed the leak and called the owner who sent a roofer within a week and it was fixed. However, the tenants didn't pay full rent, and some of the rent was "let go" due to inconvenience.

Usually the tenant (EF) paid the rent in cash, and maybe 2 or 3 times it was deposited into the landlord's bank account. Whenever the tenant asked for a receipt, one was given, and the landlord's agent has a receipt book in his car, which happened a few times.

The tenants had requested to change the lock to the rental unit because it was damaged. The landlord's agent told the landlord to change it which was done last year.

The landlord knows that the tenants cannot pay all of the rent and the landlord seeks only an Order of Possession.

**The landlord** testified that if the tenants vacate the rental unit, the landlord will "drop" the monetary claim.

**The first tenant (DB)** testified that the landlord's agent has walked into the rental unit without notice about 5 times and the landlord once. The tenant told the landlord's agent that an appointment was required to enter, so the landlord's agent wrote a note and left it on the kitchen table in the rental unit.

No receipts have been given by the landlord. The tenants pay rent in cash usually, and attend at the landlord's house or his business. The tenants only owe \$300.00 for August, 2022 rent. The tenant testified that the following payments were given to the landlord in cash, with no receipts provided by the landlord;

- \$1,000.00 on September 21, 2021 for October's rent;
- \$1,000.00 on October 26, 2021 for November's rent.

The tenant further testified that on July 23, 2022 the tenant paid \$1,000.00 rent for August, 2022.

The landlord has only ever provided 1 water bill during the tenancy and the tenants paid that directly at the City Waterworks. The landlord's agent had given the tenants a photocopy of that bill and the tenants paid it; no others were received.

The tenant seeks an order that the landlord's agent not be permitted to enter the rental unit.

On July 28, 2022, 2 men showed up and when they approached the tenant they said they were a nephew of the landlord and another person. The tenant was told that they had a U-Haul packed and that the tenants had to vacate within 3 days and they were moving in. The tenant refused, and the person who said he was the landlord's nephew was yelling at the tenant and a passerby called police, who told the men that they have to go through the Residential Tenancy Branch and follow the rules and regulations.

On July 30, 2022, 4 men showed up, including the person who said he was the landlord's nephew, and they said they wanted in the house, but the tenant again refused. The nephew grabbed the tenant and threw her down the hallway into a dresser. The tenant asked them to please get out, but they didn't and there was a lot of yelling. The nephew was screaming, swearing and scared the tenant badly. Police said that he couldn't do that, and an assault charge is pending against the person claiming to be the landlord's nephew.

**The second tenant (EF)** testified that the landlord's agent always took the rent money but never gave receipts, instead saying that the tenants didn't pay rent. He was very

violent, screaming and yelling at the tenant's wife, knocking on windows and doors for nothing. Rent was paid. The landlord was fair and the tenants paid him, but didn't want to deal with the landlord's agent anymore. Nine out of 10 times rent was paid by dropping it off at the landlord's house, after the tenants stopped dealing with the landlord's agent. Rent had been given to the landlord's agent, but he didn't give it to the landlord. When the tenant asked for a receipt, the landlord's agent was bragging that he had 3 months of rent in the trunk of his car. That's when the tenants stopped dealing with the landlord's agent, and the landlord agreed to that.

The landlord's agent kept walking into the rental unit, and the tenants agree to the landlord having a key, but not the landlord's agent.

The tenants owe the landlord \$300.00 in total.

### Analysis

Firstly, the *Residential Tenancy Act* states that where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in the approved form. In order for a landlord to seek an Order of Possession, the landlord must establish that a notice to end the tenancy was given in the approved form. No one has provided a copy of a notice to end the tenancy, and the landlord's agent was not able to provide any testimony to satisfy me that any notice in the approved form was given to the tenants. Therefore, regardless of what type of notice to end the tenancy was given, the landlord's application for an Order of Possession cannot succeed, and I cancel whatever notice it was that the landlord or the landlord's agent served to the tenant.

The landlord has not provided copies of any utility bills for this hearing, and one of the tenants testified that they only ever received 1 water bill and paid it. I am not satisfied that the landlord has established that utilities are the responsibility of the tenants, or any amounts that the tenants ought to have paid. Therefore, I dismiss the landlord's application for a monetary order for unpaid utilities.

The *Residential Tenancy Act* also protects a tenant's right to quiet enjoyment of the rental unit and restricts the landlord's right to enter a rental unit, and specifically states:

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)

(b).

Considering the testimony of the tenants, who both testified that they do not want to deal with the landlord's agent, with reasons, I am satisfied that the landlord should be ordered to comply with the *Act*. I order that the landlord ensure that no agent, relative,

friend or other person be permitted to enter the rental unit. The landlord may enter if the landlord complies with Section 29 as set out above.

It is important for a landlord to have a key to the rental unit for emergency purposes. The tenants are not opposed to the landlord having a key to the rental unit, but are opposed to the landlord's agent having a key. Considering the testimony of the tenants, which was not disputed by the landlord, I order that the landlord change the locks to the rental unit by no later than November 15, 2022, and that the landlord NOT provide a key to the landlord's agent or any other person except the tenants. If the landlord provides a key to the landlord's agent or any other person, the tenants will be at liberty to apply for an order permitting the tenants to change the locks and not provide a copy to the landlord or any agent of the landlord at the landlord's expense.

The *Act* also specifies that a landlord MUST give receipts for any money received by the tenants in cash. That means always, not just when the tenants request a receipt. I order that the landlord comply with the *Act* by giving receipts to the tenants for any money paid in cash.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order to the landlord and file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to change the locks to the rental unit by no later than November 15, 2022 and to NOT provide a copy to any other person except the tenants.

I further order the landlord to comply with Sections 28 and 29 of the *Residential Tenancy Act* as set out above.

I further order that the landlord provide receipts to the tenants for any money paid by cash.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: November 03, 2022

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Residential Tenancy Branch