



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR, RR, FFT

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:35 am in order to enable the tenants to call into the hearing scheduled to start at 11:00 am. The landlord and his agent ("**FZ**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord, FZ, and I were the only ones who had called into the hearing.

FZ stated that the landlord had received the tenants' notice of dispute resolution proceeding package. He testified that the landlord served the tenants personally with his evidence package on November 28, 2022.

FZ stated that the tenants vacated the rental unit earlier this week, without notice to the landlord. He stated that the morning of the hearing, the tenants indicated they would have all of their possessions removed from the rental unit by December 18, 2022.

Despite this, it is necessary to proceed with the hearing, as section 55(1.1) of the Act requires an arbitrator issue a monetary order for unpaid rent in the event a tenant is unsuccessful in their application to cancel a 10 Day Notice to End Tenancy for Non-Payment of Rent. As such, I must assess the validity of the Notice.

However, as the tenants have failed to attend the hearing, I find that they have failed to discharge their evidentiary burden to prove that they are entitled to a rent reduction. I dismiss this part of their application, and their application to recover the filing fee, without leave to reapply.

### **Preliminary Issue – Landlord’s Late Evidence**

Part of the reason the landlord issued the Notice was due to the tenants not paying the BC Hydro bills for the rental unit. He testified that he provided these invoices to the tenant every month. However, he did not include the invoices in his evidence package. Instead, he included a spreadsheet setting out the amounts of he says the tenants owe.

Rule of Procedure 3.19 grants the arbitrator the discretion to admit evidence after the hearing has started. In the circumstances, as the tenants have already been provided with the BC Hydro invoices, and as they knew that the unpaid invoices formed part of the reason the Notice was issued, I found it appropriate and exercise my discretion and allow the landlord to upload these invoices after the hearing.

I have reviewed these invoices prior to writing this decision.

### **Issues to be Decided**

Are the tenants entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

### **Background and Evidence**

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

The parties entered into a written, fixed term tenancy agreement starting October 1, 2020 and ending September 30, 2021. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is \$2,400, excluding utilities, and is payable on the first of each month. The tenants paid

the landlord a security deposit of \$1,200, which the landlord continues to hold in trust for the tenants.

The landlord testified that the BC Hydro account for the rental unit is in his name, and that all other utilities are in the tenants' names. He testified that he pays the BC Hydro invoices when he receives them and then sends them to the tenants for reimbursement.

The parties attended a prior hearing at the Residential Tenancy Branch (the "RTB") on August 11, 2022 relating to a previous Notice to End Tenancy for Non-Payment of Rent. The presiding arbitrator cancelled that notice, and found that the parties had entered into a repayment agreement on February 15, 2022 whereby the tenants agreed to repay rent arrears and utility arrears owed in \$500 monthly increments on the 16<sup>th</sup> day of each month.

The landlord testified that the combined amount of arrears and unpaid utilities as of February 15, 2022 was \$6,858.95 (\$5,500 of rent and \$1,358.95 of utilities). He testified that the tenants paid \$500 on March 14, 2022 and \$500 on April 4, 2022 towards this amount, but have not paid any amount since. He testified that the current amount of arrears and unpaid utilities owed pursuant to the repayment agreement is \$5,858.95. He argued that as the tenants have not made the required payments, the repayment agreement is no longer valid, and the tenants must pay the balance of the amount owed.

Additionally, the landlord testified that the tenants have failed to pay any monthly rent for the months of June to December 2022, inclusive. In total, he testified that the tenants are \$16,800 in arrears.

The landlord also testified that the tenants have not paid any of the BC Hydro utility bills that he has sent them since entering into the repayment agreement. He submitted BC Hydro invoices he sent to the tenants as follows:

| Billing Period                        | Due       | Total             |
|---------------------------------------|-----------|-------------------|
| December 7, 2021 to February 4, 2022* | 02-Mar-22 | \$458.27          |
| February 5, 2022 to April 5, 2022     | 29-Apr-22 | \$390.79          |
| April 6, 2022 to June 6, 2022         | 30-Jun-22 | \$262.72          |
| June 7, 2022 to August 5, 2022        | 31-Aug-22 | \$121.04          |
| August 6, 2022 to October 5, 2022     | 31-Oct-22 | \$117.73          |
| *not part of the repayment plan       |           | <b>\$1,350.55</b> |

On September 2, 2022, the landlord served the tenants with the Notice by posting it to the door of the rental unit. The tenants disputed it on September 7, 2022. The Notice specified that the tenant was in rental arrears of \$9,600 and owed \$1,232.82 in unpaid utilities. Additionally, the landlord made a handwritten annotation that the tenants owed \$5,858.95 pursuant to the repayment agreement.

The landlord testified that the tenants have not paid any portion of these amounts since the landlord issued the Notice.

The landlord testified that he did not issue a written demand for payment of utilities (as required by section 46(6) of the Act) 30 days prior to his issuing the Notice, or at any point during the tenancy.

### **Analysis**

Section 46 of the Act, in part, states:

#### **Landlord's notice: non-payment of rent**

**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 *[form and content of notice to end tenancy]*.

[...]

(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) 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.

Based on the undisputed testimony of the landlord, I find that the tenants owe monthly rent of \$2,400 and that the tenant has not paid any rent since for the months of June to December 2022 (inclusive). I find that the tenants are currently \$16,800 in arrears for this period.

The landlord did not issue a written demand for repayment of utilities 30 days prior to issuing the Notice, or at all. I do not find that simply sending the tenants the BC Hydro bills amounts to a demand for payment. Accordingly, I do not find that the unpaid utilities can be considered unpaid rent for the purposes of this section.

Section 52 of the Act states:

**Form and content of notice to end tenancy**

- 52** 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,  
[...]
  - (e) when given by a landlord, be in the approved form.

The Notice did not list the date it was served. However, Section 68(1) of the Act states:

**Director's orders: notice to end tenancy**

**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.

On their application, the tenants indicated that they received the Notice on September 2, 2022. As such, I find that they knew or ought to have known the date it was served on them. In the circumstances, I find it reasonable to amend the Notice to include this missing information.

Accordingly, I find that the Notice is valid and dismiss the tenants' application.

Pursuant to section 55(1) of the Act, the landlord is entitled to an order of possession.

Section 55(1.1) of the Act states:

55(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.

I understand "the unpaid rent" to refer to all rent that is unpaid, and not just unpaid rent listed on the Notice. In light of the length of time between a notice to end tenancy being issued and a hearing to occur, additional rental arrears are likely to accrue. I note that the RTB Rules of Procedure allow a landlord to amend an application for a monetary order to recover unpaid rent at the hearing, without prior notice to the tenant, to account for additional arrears that have accrued. Such an application is a mirror of the tenant's application, with the landlord having to establish the same facts and having to bear the same evidentiary burden.

For these reasons, I find it appropriate to interpret this section in such a way to allow landlords to recover all the rent owing, not just the amount listed on the Notice. Otherwise, the parties would be required to attend a further hearing on the matter, which would not be an effective use of the parties' time or of RTB resources.

Additionally, I find that the landlord is entitled to recover unpaid rent that was previously subject to the repayment agreement. I agree with the landlord's position that as the tenants have ceased making payments pursuant to that agreement, that it is no longer valid, and the landlord is entitled to collect the balance owing.

The full amount to be repaid was \$6,858.95. Of this, \$5,500 was unpaid rent and \$1,358.95 was unpaid utilities. As stated above, unpaid utilities do not form part of rent for the purposes of section 46, as the landlord did not issue a written demand for payment. As such, the landlord cannot recover unpaid utilities by way of section 55(1.1) of the Act. The tenants paid two installments (\$1,000 total) of the repayment plan. There is no indication of how this amount was apportioned between rent owing and utilities owing.



In the circumstances, as the amount of rent arrears is roughly 80% of the amount to be repaid pursuant to the repayment agreement, I find it appropriate to consider that 80% of the \$1,000 (that is, \$800) is attributable to unpaid rent that is subject to the agreement. Accordingly, I find that \$4,700 of the remaining \$5,858.95 represents unpaid rent. Pursuant to section 55(1.1) of the Act, I order the tenants to pay the landlord this amount.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 55(1.1), 67, and 72 of the Act, I order that the tenants pay the landlord \$20,300.00, representing the following:

| Billing Period                         | Total              |
|--|--------------------|
| Arrears (June to December 2022)        | \$16,800.00        |
| Arrears portion of repayment agreement | \$4,700.00         |
| Security deposit credit                | -\$1,200.00        |
|  | <b>\$20,300.00</b> |

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: December 16, 2022

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Residential Tenancy Branch