



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On October 11, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to restrict the Landlords’ right to enter pursuant to Section 70 of the *Act*.

On October 27, 2022, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing, with J.H. attending as an agent for the Landlords and P.D. attending as counsel for the Landlords. However, neither Tenant attended the hearing at any point during the 38-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of P.D., provided a solemn affirmation.

The Landlords advised that they did not receive the Tenants’ Notice of Hearing package. As this package was not served in accordance with Rule 3.1. of the Rules of Procedure (the “Rules”), and as the Tenants have not attended this hearing, the Tenants’ Application is dismissed without leave to reapply.

J.H. advised that each Tenant was served a separate Notice of Hearing and evidence package by being left at the Tenants’ front door on October 28, 2022. Given that the Landlords were also seeking a Monetary Order for unpaid rent, service of these Notice of Hearing packages in this manner was not acceptable, and the Landlords were informed that only the Order of Possession portion of the Landlords’ Application would be addressed. However, they were also advised that as the Tenants’ disputed the Notice, the issue of a Monetary Order for unpaid rent may still be considered, pursuant

to Section 55 of the *Act*. Moreover, as the Landlords' evidence packages were served in accordance with Section 88 of the *Act*, I have accepted the Landlords' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.H. advised that the tenancy started on September 20, 2022, that the rent was currently established at an amount of \$3,750.00 per month, and that \$1,875.00 was due on the 1st day of each month, and that the remaining \$1,875.00 was due on the 15th day of each month. A security deposit of \$3,750.00 was also paid, and the Landlords were advised that they were permitted to collect a maximum of a half a month's rent as a security deposit, pursuant to Section 19 of the *Act*. Furthermore, any overpayment of a security deposit could be deducted from a future month's rent. A copy of the signed tenancy agreement was submitted as documentary evidence.

J.H. then advised that the Notice was served to the Tenants on October 5, 2022, by hand, and a signed proof of service document was submitted as documentary evidence to corroborate service. The Notice indicated that \$3,125.00 was owing for rent on October 1, 2022, and that this was broken down as \$1,250.00 owing for the pro-rated

rent from September 20 to September 30, 2022, and \$1,875.00 that was owed on October 1, 2022. As well, the effective end date of the tenancy was noted on the Notice as October 15, 2022.

She testified that the Tenants did not pay any rent since the tenancy started, and that they have not paid any rent up to the date of the hearing. She acknowledged that she was not aware that there was a limit on the amount of a security deposit that could be collected, or that it could be withheld from a future month's rent.

C.H. and P.D. provided submissions; however, these were not relevant, not particularly useful, and/or not necessarily pertinent, in rendering a Decision on the Notice. E.W. did not make any submissions at all.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 19 of the *Act* stipulates that the Landlords must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of half of one month's rent payable under the tenancy agreement. As well, it notes that the Tenants may deduct any overpayment from rent, or otherwise recover the overpayment.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the Notice, I acknowledge that the Landlords indicated the incorrect amount of rent owing on October 1, 2022. I accept that \$1,250.00 was owed for the

period of September 20 to September 30, 2022, and that rent for October 1 to October 15, 2022, in the amount of \$1,875.00, was also owed. However, as the Tenants had overpaid their security deposit, this overpayment of \$1,875.00 could have been applied to the rental arrears. As such, I am satisfied that as of October 1, 2022, the amount of rent owing as indicated by the Landlords on the Notice was incorrect.

The consistent and undisputed evidence before me is that the Tenants were served the Notice on October 5, 2022. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Notice was served on October 5, 2022, the Tenants must have paid the rent in full by October 10, 2022, or disputed the Notice by October 11, 2022, at the latest. While the Tenants disputed the Notice, they did not attend the hearing and their Application was dismissed without leave to reapply.

Furthermore, while I am satisfied that the amount of rent indicated on the Notice was incorrect, as the Tenants had made no rental payments at all, I find that it is obvious that some rent was still owing, even despite the deduction of the excess security deposit collected. Given that there is no evidence before me that the Tenants made any efforts to pay any rent that they believed was still owing, in an attempt to cancel the Notice, I find that this was a valid Notice. As there is no evidence before me that the Tenants had any authority under the *Act* to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55(1) of the *Act*. As such, I grant the Landlords an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

Moreover, regarding the Landlords' claims for monetary compensation, as noted above, the Landlords did not serve the Notice of Hearing packages in a manner in accordance with Section 89 of the *Act* in order to consider a monetary claim as well. As such, I find that the Landlords are not entitled to recover the \$100.00 filing fee.

However, despite this, Section 55(1.1) permits a claim for monetary compensation to be awarded when a Tenants' Application to dispute the Notice is dismissed. As a result, based on the undisputed evidence before me, I grant the Landlords a monetary award

in the amount of **\$8,750.00** for the outstanding rental arrears up until December 15, 2022.

Pursuant to Sections 55 and 67 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Rental arrears for September 20 to September 30, 2022	\$1,250.00
Rental arrears for October 1 to October 15, 2022	\$1,875.00
Overpayment of security deposit	-\$1,875.00
Rental arrears for October 15 to October 31, 2022	\$1,875.00
Rental arrears for November 1 to November 15, 2022	\$1,875.00
Rental arrears for November 15 to November 30, 2022	\$1,875.00
Rental arrears for December 1 to December 15, 2022	\$1,875.00
Total Monetary Award	\$8,750.00

The Landlords may make a future Application for any additional rental loss or damages that may have occurred. As a note, as the overpayment of the security deposit has already been encapsulated in this Decision, the parties are reminded that the Landlords are still holding a security deposit of \$1,875.00 in trust, and this deposit must be dealt with in accordance with Section 38 of the *Act* at the end of the tenancy.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$8,750.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: December 2, 2022

Residential Tenancy Branch