



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNR, DRI, RR, RP, PSF, OLC, FFT
OPR, MNRL, FFL

Introduction

The landlord seeks an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and a monetary order for unpaid rent. The tenants seek an order cancelling the Notice. Both parties seek to recover the cost of their application filing fees. The tenants seek additional relief under the *Residential Tenancy Act* ("the Act"). However, the tenants' additional relief will not be dealt with in this dispute.

An agent for the landlord and the tenants attended the hearing. It should be noted that while five individuals were listed as tenants on the tenants' application, the landlord's agent submitted that only two of those individuals (J.K. and O.T.) are what it considers to be the legal tenants. The other individuals are what are considered occupants.

Preliminary Issue: Dismissal of Unrelated Claims

According to Rule 2.3 of the *Rules of Procedure*, claims made in an application must be related to each other. The arbitrator has the discretion to dismiss unrelated claims, with or without the opportunity to reapply.

After careful consideration, I have determined that the claims for everything other than the tenants' request for an order cancelling the notice are unrelated and should be dismissed. However, the tenants are granted leave to reapply if they choose to do so. This decision is also made in the interest of efficient case management.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
3. Is either the tenants or the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I carefully considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began April 4, 2021. Monthly rent, depending on who you ask, is either \$1,300.00 or \$1,350.00. The landlord's position is that it is the former, while the tenants believe it to be the latter. Either way, rent is due on the first day of the month. Both parties accepted that there is a \$750.00 security deposit attached to the tenancy. There is, unfortunately, no written tenancy agreement in place for this tenancy.

The landlord's agent testified under oath that they served the Notice by registered mail on July 26, 2022. Canada Post documentation indicates that both copies of the Notice were received by the tenants on July 22, 2022. The Notice indicated that a total of \$2,000.00 was due and owing as of July 1, 2022. This amount includes an unpaid balance of \$700.00 from June and an additional amount of \$1,300.00 from July 1. A copy of the Notice was in evidence.

The agent further testified that the tenants have not paid a single dime in rent since July 1, 2022. As of December 1, the rent arrears are \$8,500.00.

The tenant (J.K.) testified under oath that the landlord never provided them with a tenancy agreement. They also testified that the landlord tried to illegally raise the rent to \$1,800.00. Copies of text messages between the parties point to the landlord's desire to increase the amount, though there are no notices of any rent increase ever occurring.

As for paying the rent, the tenant testified that they decided to stop paying rent in cash. They desired some form of proof of payment going forward. The landlord allegedly did not want to accept e-transfers. The tenant also spoke about issues concerning laundry facilities being terminated by the landlord. The tenant testified that they paid \$1,200.00, not \$600.00. However, the tenant then explained that they had no contact information for the landlord to pay rent to. The tenant did not dispute that no rent has been paid since July 2022.

The landlord's agent briefly responded by saying that the tenants could've paid rent by other means. And, that the tenants had the landlord's address for service (including the landlord's address being included on the Notice). This was, the agent added, simply a case of "straight up refusal to pay rent."

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows that the tenants did not pay the rent on July 1, 2022 and have not paid any rent since then. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the tenants' non-payment of rent. There is no evidence before me to find that the tenants had a legal right to withhold the rent. And the tenant's explanation that they did not pay rent because they did not have the landlord's contact information borders on the absurd—I do not accept this as a legal justification for withholding rent for half a year.

Further, I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenants' application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenants. The tenants have two days to vacate the rental unit from the date of service or deemed service. The order of possession is enforceable in the Supreme Court of British Columbia.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenants are ordered to pay \$8,500.00 to the landlord.

Since the landlord was successful in their application, they are entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$8,600.00.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the \$750.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount (\$7,850.00) is attached to this Decision and must be served on the tenants. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The tenants' application to cancel the Notice is dismissed without leave to reapply. The remainder of the tenants' application is dismissed with leave to reapply.

The landlord's application is granted in its entirety. The landlord is granted an order of possession and a monetary order.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: December 15, 2022

Residential Tenancy Branch