



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenants: CNR-MT, FFT
Landlords: OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (‘the 10 Day Notice’) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution

hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of November 26, 2022 on November 15, 2022. In accordance with section 88 of the *Act*, I find that the tenants duly served with the 10 Day Notice on November 15, 2022.

Preliminary Issue—Tenants' Application for an Extension of Time to File their Application for Dispute Resolution

The tenants filed this application on November 22, 2022 after being served with the 10 Day Notice on November 15, 2022. The tenants had the right to dispute the Notice within 5 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*. Normally if the tenant does not file an Application within 5 days, they are presumed to have accepted the Notice, and must vacate the rental unit.

The tenants testified that they had difficulty applying online, and were unable to reach an information officer for assistance from the RTB until November 22, 2022.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances.

RTB Policy Guideline #36 clarifies the meaning of "exceptional circumstances" as "*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered 'exceptional' circumstances include...the party did not know the applicable law or procedure*".

On the basis of section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants provided a valid explanation for why they could not file within the required timeline. I allow the tenants' application for additional time to file their application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not are the landlords entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are both parties entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 15, 2022 for a term of one year. Monthly rent is currently set at \$3,700.00, payable on the first of the month. The landlords hold a security deposit of \$1,850.00.

On November 15, 2022, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord confirmed that the tenants owed \$3,114.00 on that date. The landlord testified in the hearing that although the tenants did attempt to make partial payments after the 10 Day Notice was served, the tenants currently still owe \$2,844.00 in outstanding rent as of the hearing date.

The landlord confirmed the following payments during the hearing, which were for use and occupancy only:

November 18, 2022: \$200.00

November 23, 2022: \$1,350.00

November 30, 2022: \$450.00 & 450.00

December 3, 2022: \$1,000.00 and \$490.00

December 10, 2022: \$80.00 and \$20.00

December 15, 2022: \$200.00
December 31, 2022: \$730.00 and \$1,100.00
January 5, 2023: \$400.00 and \$350.00
January 6, 2023: \$450.00.

The landlord testified that they tried to provide the tenants with more time to make their payments, but the tenants have been unable to pay down the outstanding amount. The landlord is requesting the standard Order of Possession.

The tenants do not dispute that they have been unable to pay the outstanding rent in full, and requested for time to make these payments. The tenants testified that they have made an effort to pay as much as possible, as supported by the payments above.

Analysis

Section 46(4) of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, the tenants filed their application late, but as noted above, an extension for filing the application was granted.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony and evidence before me, I find that the tenants were served with the Notice to End Tenancy on November 15, 2022 for failing to pay \$3,114.00 in outstanding rent. Since being served with the 10 Day Notice, the tenants were only able to make partial payments towards the outstanding amount, and still owed \$664.00 by the end of November 2022. Since that time, the tenants have continued to make only partial payments. According to the landlord's testimony, as of the hearing date, the tenants still owed \$2,844.00 in outstanding rent.

The tenants failed to pay the outstanding rent within five days of being served with the 10 Day Notice. Based on the evidence before me, I find that the tenants did not have the right to withhold, deduct, or reduce the rent payable for this tenancy. I find that the

10 Day Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form. Accordingly, I find the 10 Day Notice to be valid, and the tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply. I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

As to the landlords' application for a monetary order for unpaid rent, I find that the above calculations show that the tenants owe \$3,244.00 in outstanding rent as of the hearing date. The landlord's testimony was that the tenants owe \$2,844.00 in outstanding rent. As there is a discrepancy in the amounts, I will allow the landlords a monetary order for the lesser amount. The landlords may reapply if they are able to establish that any additional rent is due and remains unpaid. Liberty to reapply is not an extension of any applicable timelines.

As the landlords were successful in their application, I am allowing the landlords to recover the \$100.00 filing fee paid for their application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlords retain the tenants' security deposit in partial satisfaction of the monetary awards granted.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlord's application is allowed. I find that the landlord's 10 day Notice is valid.

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.

I issue a monetary order in the landlords' favour in the amount of \$1,094.00 as set out in the table below:

Item	Amount
Monetary Order for Unpaid Rent	\$2,844.00

Filing Fee	100.00
Less security deposit held	-1,850.00
Total Monetary Order to Landlords	\$1,094.00

The landlords are provided with a monetary order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 10, 2023

Residential Tenancy Branch