



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the Tenants' application under section 46 of the *Residential Tenancy Act* (the "Act") to dispute a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities dated September 2, 2022 (the "10 Day Notice").

The Landlords and the Landlords' agents NG and MM attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. NG acted as an interpreter for the Landlords during the hearing.

The Tenants did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenants to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlords, the Landlords' agents, and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Landlord's Name and Addition of Landlord

This application initially listed AG as the sole landlord and respondent. NG confirmed that there is a typo in AG's name as stated on the application.

NG confirmed that VB is also a landlord. I have reviewed a copy of the tenancy agreement and find that it is signed by both AG and VB as landlords.

Based on the foregoing, I have amended this application to correct the spelling of AG's name and have added VB as a second landlord and respondent.

Preliminary Matter – Service of Dispute Resolution Documents

NV confirmed receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlords to be sufficiently served with the NDRP Package pursuant to section 71(2) of the Act.

MM testified that copies of the Landlords' documentary evidence were sent to each of the Tenants in registered mail packages on October 3, October 18, and December 31, 2022 (tracking numbers referenced on the cover page of this decision). I find the Tenants were served with the Landlords' documentary evidence in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, the Tenants are deemed to have received the evidence packages on the fifth day after mailing, that is, on October 8 and 23, 2022 and January 5, 2023.

Preliminary Matter – Tenants' Non-attendance

Rule 7.3 of the Rules of Procedure states as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the Tenants did not attend this hearing while the Landlords and the Landlords' agents duly attended, I directed that the hearing be conducted in the absence of the Tenants.

Issues to be Decided

1. Are the Tenants entitled to cancel the 10 Day Notice?
2. Are the Landlords entitled to an Order of Possession?
3. Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on June 15, 2022 for a fixed term ending on June 15, 2023, and month-to-month thereafter. Rent is \$2,400.00 due on the first day of each month. The Tenants paid a security deposit of \$1,150.00 which is held by the Landlords.

Copies of the 10 Day Notice have been submitted into evidence. The 10 Day Notice is signed by MM as agent and has an effective date of September 12, 2022. It states the Tenants failed to pay rent of \$7,200.00 due on September 1, 2022. NG explained that the \$7,200.00 on the 10 Day Notice consists of unpaid rent for July, August, and September 2022.

MM confirmed that she gave copies of the 10 Day Notice to the Tenants in person on September 2, 2022. The Tenants' application also indicates that the Tenants received the 10 Day Notice in person on September 2, 2022.

NG testified that except for the month of October 2022, the Tenants have not paid any rent to the Landlords since July 2022. The Landlords' evidence includes a monetary order worksheet indicating a total amount owing of \$14,400.00, as well as a receipt for use and occupancy dated October 20, 2022.

MM testified that the Tenants are still residing in the rental unit.

Analysis

1. Are the Tenants entitled to cancel the 10 Day Notice?

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

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and note that there is a minor typo in AG's name. I find that this typo does not invalidate the 10 Day Notice. In any event, I find the Tenants knew or should have known the correct spelling of AS's name, and that it would be reasonable in the circumstances to amend the 10 Day Notice under section 68(1) of the Act. I find the 10 Day Notice complies with the requirements of section 52 of the Act.

I find the Tenants were served with the 10 Day Notice in accordance with section 88(a) of the Act on September 2, 2022.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenants had until September 7, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the Residential Tenancy Branch indicate that this application was submitted on September 3, 2022. I find the Tenants' application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I accept the Landlords' undisputed evidence that the Tenants failed to pay rent for the months of July, August, September, November, and December 2022 as well as January 2023. I find there is no evidence to suggest that the Tenants had a legal right under the Act to withhold payment of rent to the Landlords.

Based on the foregoing, I find that the Landlords have established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenants' claim to dispute the 10 Day Notice.

2. Are the Landlords entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenants' application to dispute the 10 Day Notice, I find the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenants.

3. Are the Landlords entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to

order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

In this case, there is an application to dispute the 10 Day Notice and the conclusive presumption does not apply. I accept MM's testimony that the Tenants have not vacated the rental unit as at the date of the hearing.

Pursuant to section 68(2) of the Act, I order that for the purposes of calculating unpaid rent under section 55(1.1), the parties' tenancy is ended effective the date of the dispute resolution hearing, or January 23, 2023, rather than the effective date stated on the 10 Day Notice.

Based on the Landlords' undisputed evidence, I am satisfied that as at the date of the hearing, the Tenants owe \$14,400.00 in unpaid rent to the Landlords (equivalent to \$2,400.00 × 6 months).

Accordingly, I order the Tenants to pay the Landlords \$14,400.00 for unpaid rent under section 55(1.1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenants' \$1,150.00 security deposit in partial satisfaction of the total amount awarded in this decision.

The Monetary Order granted to the Landlords for the balance is calculated as follows:

Item	Amount
Unpaid Rent from July to September 2022, and November 2022 to January 2023 (\$2,400.00 × 6 months)	\$14,400.00
Less Security Deposit	- \$1,150.00
Total Monetary Order	\$13,250.00

Conclusion

The Tenants' application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenants. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are authorized to retain the Tenants' \$1,150.00 security deposit in partial satisfaction of the total amount awarded in this decision.

Pursuant to section 55(1.1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$13,250.00** for the balance. This Order may be served on the Tenants, filed in the Provincial Court of British Columbia, 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 23, 2023

Residential Tenancy Branch