



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR-DR MNR-DR

Introduction

This hearing was reconvened as a result of the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Landlords applied for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55; and
- a monetary order for unpaid rent and/or utilities pursuant to section 55.

This hearing was reconvened ("Reconvened Hearing") from a non-participatory, *ex parte*, "direct request" proceeding ("Original Hearing"). In an interim decision dated November 1, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlords. As a result, the Reconvened Hearing was scheduled for hearing on January 6, 2023, to consider the Application. The Notice of Dispute Resolution Proceeding for the Reconvened Hearing ("Reconvened NDRP") was enclosed with the Interim Decision and emailed to the Landlords. The Landlords were instructed by the Residential Tenancy Branch ("RTB") to serve the Reconvened NDRP, Interim Decision and other required documents on each of the Tenants within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Tenants did not attend the Reconvened Hearing. I left the teleconference hearing connection open until 11:29 am in order to enable the Tenants to call into the Reconvened Hearing scheduled for 11:00 am. The two Landlords ("SE" and "DG") attended the Reconvened Hearing and were 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 were provided in the Reconvened NDRP. I also confirmed from the teleconference system that SE, DG and I were the only ones who had called into this teleconference.

SE stated the Landlords served the NDRP for the Original Hearing and the Landlords' evidence (collectively the "Original NDRP Package") on each of the Tenants by registered mail on September 28, 2022. SE provided the Canada Post tracking numbers for service of the Original NDRP Package on each of the Tenants to corroborate his testimony. Based on SE's undisputed testimony, I find the Original NDRP Package was served on each of the Tenants in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Original NDRP Package was deemed to have been received by on each of the Tenants on October 3, 2022, being 5 days after posting.

SE stated the Landlords served the Reconvened NDRP on each of the Tenants by registered mail on November 4, 2022. SE provided the Canada Post tracking numbers for service of the Reconvened NDRP on each of the Tenants. Based on the undisputed testimony of SE, I find the Reconvened NDRP was served on each of the Tenants in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the Reconvened NDRP was deemed to have been received by the Tenants on November 9, 2022, being 5 days after posting.

SE stated the Landlords did not receive any evidence from the Tenants for the Reconvened Hearing.

Issues to be Decided

- are the Landlords entitled to an Order of Possession for unpaid rent and/or utilities?
- are the Landlords entitled to recover unpaid rent and/or utilities from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

SE submitted into evidence a digitally signed copy of a tenancy agreement ("Tenancy Agreement") dated May 6, 2022 between the Landlords and Tenants. The Tenancy Agreement stated the tenancy commenced on June 1, 2022, with a fixed term ending

May 31, 2023, with rent of \$2,500.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$1,250.00 by June 1, 2022. SE stated the Tenants paid the security deposit and that the Landlords were holding it in trust for the Tenants. I find there was a tenancy between the Landlords and Tenants and that I have jurisdiction to hear the Application.

SE submitted into evidence a signed copy of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated August 2, 2022 ("10 Day Notice"). SE stated the 10 Day Notice was served on the Tenants by registered mail on September 2, 2022. SE provided the Canada Post tracking number for service of the 10 Day Notice on the Tenants. Based on the undisputed testimony provided by SE, I find the 10 Day Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenants owed \$2,500.00 for unpaid as of August 1, 2022 and \$179.00 for unpaid utilities as of July 26, 2022. SE testified the Tenants owed \$2,500.00 for unpaid rent as of August 1, 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Jul-22	\$2,500.00		\$2,500.00
16-Jul-22		\$1,125.00	\$1,375.00
19-Jul-22		\$1,375.00	\$0.00
01-Aug-22	\$2,500.00		\$2,500.00
Total	\$5,000.00	\$2,500.00	\$2,500.00

SE stated the Tenants also owe the Landlords \$179.00 for unpaid utilities. SE stated the Landlords served the Tenants with a 30 day notice to pay utilities. SE stated the Tenants have not paid any rent since the last payment on July 19, 2022 and that the Tenants now have additional rental arrears of \$12,500.00 for the months of September 2022 through to January 2023.

Analysis

1. Landlords' Claim for Order of Possession

Subsection 26(1) and 46(1) through 46(5) of the Act state:

- 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.
- 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.*

[emphasis added in italics]

The undisputed testimony of SE was the Landlords served the 10 Day Notice by registered mail on August 2, 2022. Pursuant to section 90 of the Act, the Tenants were deemed to have been served with the 10 Day Notice on August 7, 2022. Pursuant to section 46(4), the Tenants had until August 12, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. SE stated the Landlords were unaware of the Tenants making an application to dispute the 10 Day Notice. As such, I find the Tenants did not make any application for dispute resolution to dispute the 10 Day Notice.

Based on the undisputed testimony of SE, I find the Tenants owed the Landlords \$2,500.00 for unpaid rent for August 2022. SE also claimed the Tenants owed the Landlords \$179.00. After the hearing, I carefully reviewed the Tenancy Agreement. Although the Tenancy Agreement indicates rent did not include electricity or natural gas, it did not provide the Tenants were required to pay the Landlords for all or some portion of the utilities. As such, I find the Landlords are not entitled to make a claim for the utilities of \$179.00 disclosed in the 10 Day Notice.

Section 26(1) provides that a tenant must pay the rent when due. As such, I find the Landlords have satisfied their onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Pursuant to section 46(5), the Tenants were conclusively presumed to have accepted that the tenancy ended on August 12, 2022, being the effective date of the 10 Day Notice.

Sections 55(2) and 55(4) state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
- (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Pursuant to section 46(5) of the Act, I find the tenancy ended on the effective date of the 10 Day Notice on August 12, 2022. As the Tenants did not make an application for dispute resolution to dispute the 10 Day Notice, and as they have not vacated the rental unit, I order the Tenants to provide the Landlords with vacant possession of the rental unit pursuant to section 55(4)(a) of the Act.

2. Monetary Order for Unpaid Rent:

As noted above, I have found that the Tenants had rental arrears of \$2,500.00 for unpaid rent for August 2022 and the tenancy ended on August 12, 2022. The Landlords also sought unpaid rent for the months of September 2022 through to January 2023. Section 57(3) of the Act states:

- 57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline 3 ("PG 3") provides guidance, among other things, on situations where a landlord may seek unpaid rent or, where the tenancy has ended pursuant to conclusive presumption under section 46(5)(a) of the Act. PG 3 states in part:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Accordingly, the landlord must seek compensation where the tenant overholds the rental unit after the tenancy has ended pursuant to subsection 57(3) of the Act. In his Application, the Landlords made a claim for unpaid rent but did not make a claim to seek monetary compensation for the Tenants overholding the rental unit. As such, the Landlords are not entitled to seek rental arrears that accrued after the effective date of the 10 Day Notice, being August 12, 2022. In these circumstances, the Landlords have the option of making an application for dispute resolution to seek compensation for the time the Tenants overhold the rental unit rental after the effective date of the 10 Day Notice as stated in PG 3.

As noted above, I have found the Tenants had rental arrears of \$2,500.00 as of August 1, 2022 and the Landlords have not received any payments for rent since that time. Pursuant to section 55(4)(b) of the Act, I order the Tenants pay the Landlords \$2,500.00 in satisfaction of the rental arrears owed for August 2022. Pursuant to section 72(2)(b) of the Act, the Landlords may deduct the Tenants' security deposit of \$1,250.00 from the rental arrears owed by the Tenants, leaving a balance of \$1,250.00.

Conclusion:

I order the Tenants deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and the attached Order of Possession by the Landlords. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Tenants pay the Landlords \$1,250.00, representing the following:

Description	Amount
Rental Arrears for August 2022	\$2,500.00
Less Tenants' Security Deposit	\$1,250.00
Total	\$1,250.00

This Monetary Order must be served by the Landlords on the Tenants and may be enforced in Provincial 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 7, 2023

Residential Tenancy Branch