



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, MNR-DR, FFL, FFT, CNR, MNDCT, OLC,

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

At the hearing the Agent for the Tenant confirmed that the Tenants applied to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 03, 2022, which was submitted in evidence by the Tenants.

The Agent for the Tenant September 15, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Tenants on August 21, 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 07, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was left in the Landlord's mailbox on January 07, 2023. The Agent for the Tenant stated that there was a delay in serving this evidence as both the Agent for the Tenant and the female Tenant's children had been ill.

The Agent for the Landlord stated that the evidence package of January 07, 2023 was received January 07, 2023, although the Landlord has not had sufficient time to consider it.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on by the Applicant at the hearing must be received by the Respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find that the documents that were submitted to the Residential Tenancy Branch and served to the Landlord by the Tenant on January 07, 2023 did not comply with the timelines established by the Residential Tenancy Branch Rules of Procedure. As such the Tenants' evidence that was submitted on January 07, 2023 were not accepted as evidence for these proceedings.

I note that the Tenants submitted documents to the Residential Tenancy Branch on January 07, 2023, which establish proof of service of various documents. These documents are considered to be evidence and those documents will be considered at these proceedings.

In determining that the documents considered as evidence submitted on January 07, 2023 should not be accepted, I find that all of those documents were available on, or before, September 27, 2022. As such, I find that they could have been served in a timelier manner, even if the parties had been ill.

During the hearing the Agent for the Tenant referred to a list of e-transfers submitted by the Tenants on January 07, 2023. The Agent for the Landlord agreed that I could refer to that document during the hearing. I therefore accepted that particular document as evidence for these proceedings.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution. This Application for Dispute Resolution names the Respondents as the Tenants with the initials "SK" and "RH", hereinafter referred to as the Tenants, "SK", or "RH".

The Agent for the Landlord stated that on October 28, 2022 the Dispute Resolution Package was sent to the Tenants with the initials "RH" and "SK", via registered mail.

The Landlord submitted an envelope which shows that a package was mailed to “RH” on October 28, 2022, which was returned to the sender by Canada Post with a notation that it was “refused”. The Landlord submitted an envelope which shows that a package was mailed to “SK” on October 28, 2022, which was returned to the sender by Canada Post with a notation that it was “refused”. The Agent for the Tenant stated that the Tenants did not refuse to accept these packages and that someone living in the upper portion of the house could have refused it.

I find, on the balance of probabilities, that the Landlord’s Application for Dispute Resolution was sent to “SK” and “RH” by registered mail on October 28, 2022. I therefore find that these documents were served to “SK” and “RH” in accordance with section 89(1)(c) of the *Act*.

I find, on the balance of probabilities, that the package was delivered to the rental unit by Canada Post and that it was refused by one, or both, of the recipients. I find the information provided on the packages by Canada Post is far more compelling than the Tenants’ submission that they did not refuse the packages which, in my view, is self-serving and unlikely. A party cannot avoid service of legal documents by simply refusing to accept registered mail. I therefore find that the Tenants were deemed served with the Landlord’s Application for Dispute Resolution on October 31, 2022, pursuant to section 90 of the *Act*.

It is important to note that the Landlord was granted an Order of Possession and a monetary Order on the basis of the Tenants’ Application for Dispute Resolution, which will be addressed later in this decision. I therefore find that the outcome of these proceedings would be largely the same even if the Landlord had not filed an Application for Dispute Resolution and, to a large extent, the Tenants have not been disadvantaged by not receiving the Landlord’s Application for Dispute Resolution.

On October 14, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the “SK” and “RH” with the Landlord’s Application for Dispute Resolution on October 28, 2022, via registered mail. As these documents were served to the Tenants in the packages I have concluded were deemed served on October 31, 2022, I find they were properly served to the Tenants.

In an abundance of caution, I did not consider the Landlord’s evidence of October 14, 2022 because the Tenants did not acknowledge receive it. I was able to decide this

matter on the basis of the testimony presented at the hearing and the documentary evidence submitted by the Tenants. The Tenants cannot, therefore, argue that they were disadvantaged because they did not receive the Landlord's evidence of October 14, 2022.

On December 24, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenants' door on December 18, 2022. The Tenants deny receiving this evidence.

While I accept the Landlord's submission that evidence was posted on the door on December 24, 2022, I find it is possible that the Tenants did not receive it. I find it possible that this package was removed by a third party. As I am not satisfied that the Tenants received the evidence package of December 24, 2022, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants have identified several issues in dispute on their Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in the Tenants' Application for Dispute Resolution is their application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I will therefore consider that application, in addition to the application to recover the fee for filing the Tenants' Application for Dispute Resolution.

The Tenants have applied for other issues that are not sufficiently related to their application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I

therefore dismiss the Tenants' application for a monetary Order for loss of quiet enjoyment of the rental unit and for an Order requiring the Landlord to comply with the Act and or the tenancy agreement, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution for the issues that have been severed.

I note that in the Application for Dispute Resolution the Tenants allege that it is not safe to live in the rental unit. As will be discussed in this decision, the Landlord has been granted an Order of Possession. As the Tenants have been ordered to vacate the rental unit, the safety of the unit is not an urgent issue.

Preliminary Matter #2

The Agent for the Tenant stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the Tenants are disputing, which is dated August 03, 2022, was the subject of a previous dispute resolution proceeding in which the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was "cancelled". The file number for this previous proceeding appears on the first page of this decision.

During the hearing I viewed the decision from that previous proceeding, which is dated September 14, 2022.

That decision related to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession and a monetary Order for unpaid rent. The Application for Dispute Resolution was dismissed by a Residential Tenancy Branch Adjudicator, with leave to reapply. I specifically note that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not "cancelled" by the Adjudicator, as the Tenants submit.

The application for an Order of Possession was related to a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities which was dated July 05, 2022. As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of the Tenants' Application for Dispute Resolution is dated August 03, 2022 and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of the Landlord's Application for Dispute Resolution is dated September 02, 2022, I cannot conclude that the previous dispute resolution has any bearing on these proceedings.

Preliminary Matter #3

The Agent for the Tenant asked that I consider all evidence submitted to the Residential Tenancy Branch regarding the previous dispute resolution proceeding which related to the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 05, 2022.

The parties were advised that I will not be considering evidence from the previous dispute resolution proceeding.

Residential Tenancy Branch Rules of Procedure prevent me from considering evidence that is not served to the other party as evidence for these proceedings. Even if the one party served evidence to the other party in support of a previous dispute resolution proceeding, I cannot conclude that it was served to that party for these proceedings. I therefore cannot conclude that the other party would understand that those documents would be considered at these proceedings.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession?

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2022, be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent or unpaid utilities?

Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on February 01, 2022;
- the Tenants agreed to pay monthly rent of \$1,700.00 by the first day of each month;
- there is a written tenancy agreement, which names “SK” and “RH” as the tenants;
- the other people named in the Tenants’ Application for Dispute Resolution are children and are not named on the tenancy agreement.

The Agent for the Tenant stated that in March of 2022 the Landlord increased the rent to \$1,750.00 and that the Tenant paid rent of \$1,750.00 March, April, and May of 2022. The Agent for the Landlord stated that rent was never increased to \$1,750.00 and that the Tenants never paid rent in that amount.

The Agent for the Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2022, which is the Notice the Tenants applied to dispute, was posted on the door of the rental unit on August 03, 2022. The Agent for the Tenant stated that she located this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the Tenant's door on August 03, 2022 and that she gave a copy of it to "SK" on the same day. "SK" stated that she received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on August 03, 2022 when it was given to her by the Agent for the Tenant.

The Landlord and the Tenants agree that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2022 declares that rent of \$1,700.00 that was due on August 01, 2022 had not been paid and that the rental unit must be vacated by August 16, 2022.

The Agent for the Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 02, 2022, which is the Notice the Landlord applied to enforce, was posted on the door of the rental unit on September 02, 2022. "RH" and "SK" both testified that this Notice was not received.

The Agent for the Landlord stated that rent of \$850.00 was paid for March of 2022 on March 01, 2022 and another \$800.00 was paid, in cash, on March 03, 2022, for which a rent receipt was provided. The Landlord did not submit a copy of this rent receipt. The Agent for the Tenant stated that \$1,750.00 in rent was paid for March of 2022, in cash, on March 01, 2022 and that a rent receipt was not provided. The Agent for the Tenant alleges the payment was made at the office.

The Agent for the Landlord stated that rent of \$800.00 was paid for April of 2022 on April 08, 2022, by e-transfer; another \$700.00 was paid on April 12, 2022, by e-transfer; and another \$200.00 was paid on April 22, 2022, by e-transfer. The Agent for the Tenant stated that \$1,750.00 in rent was paid for April of 2022, in cash, on April 01, 2022 and that a rent receipt was not provided. The Agent for the Tenant alleges the payment was made at the office.

The Agent for the Landlord stated that rent of \$1,300.00 was paid for May of 2022 on April 27, 2022, by e-transfer, and another \$400.000 was paid on April 29, 2022, by e-transfer. The Agent for the Tenant stated that \$1,750.00 in rent was paid for May of 2022, in cash, on May 02, 2022 and that a rent receipt was not provided. The Agent for the Tenant alleges the payment was made at the office.

The Agent for the Landlord stated that rent of \$750.00 was paid for June of 2022 on June 27, 2022, by e-transfer, and that no other payment was made for June of 2022. The Agent for the Tenant stated that \$1,550.00 in rent was paid for June of 2022, in cash, on June 04, 2022 and another cash payment of \$190.00 was made on June 22, 2022, however rent receipts were not provided. The Agent for the Tenant alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that rent was not paid for July of 2022. "RH" stated that on July 01, 2022 rent of \$1,700.00 was paid, in cash, for July of 2022, however a rent receipt was not provided. "RH" alleges the payment was made at the office.

The Agent for the Landlord stated that rent was not paid for August of 2022. "RH" stated that on August 02, 2022 rent of \$1,700.00 was paid, in cash, for August of 2022, however a rent receipt was not provided. "RH" alleges the payment was made at the office.

The Agent for the Landlord stated that rent was not paid for September of 2022. "RH" stated that on September 01, 2022 rent of \$1,700.00 was paid, in cash, for September of 2022, however a rent receipt was not provided. "RH" alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that rent was not paid for October of 2022. "RH" stated that on October 01, 2022 rent of \$1,700.00 was paid, in cash, for October of 2022, however a rent receipt was not provided. "RH" alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that rent was not paid for November of 2022. "RH" stated that on November 01, 2022 rent of \$1,700.00 was paid, in cash, for November of 2022, however a rent receipt was not provided. "RH" alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that rent was not paid for December of 2022. "RH" stated that on December 01, 2022 rent of \$1,700.00 was paid, in cash, for December of 2022, however a rent receipt was not provided. "RH" alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that rent was not paid for January of 2023. "RH" stated that on January 02, 2023 rent of \$1,700.00 was paid, in cash, for January of 2023, however a rent receipt was not provided. RH" alleges the payment was made to the Landlord at the rental unit.

The Agent for the Landlord stated that when rent was paid in cash in February and March of 2022, that rent receipts were provided. He stated that no rent was paid, in cash, after March 03, 2022.

The Agent for the Tenant stated that after the Tenants received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on August 03, 2022, they attempted to call the office on August 03, 2022 and again on August 04, 2022 to address the allegation that rent has not been paid. She stated that the Tenants were unable to connect with the Landlord to ascertain why the Landlord believed rent had not been paid.

In the list of e-transfers submitted by the Tenant, there is an email transfer from the Tenants to the Landlord, dated April 22, 2022, in the amount of \$200.00, which was accepted by the Landlord. The Landlord acknowledged receipt of this payment.

When asked why the Tenant would have sent an e-transfer of \$200.00 on April 22, 2022 when the rent had been allegedly paid on April 01, 2022, the Agent for the Tenant stated that there "must have been" \$100.00 owing from March of 2022. The Agent for the Landlord stated that March rent was in arrears by \$50.00.

In the list of e-transfers submitted by the Tenant, there is an email transfer from the Tenants to the Landlord, dated June 08, 2022, in the amount of \$200.00, which was reportedly declined. The Agent for the Tenant stated that the transfer was declined by the Landlord. The Agent for the Landlord stated that this transfer was not received by the Landlord and it was not declined by the Landlord.

In the list of e-transfers submitted by the Tenant, there is an email transfer from the Tenants to the Landlord, dated June 27, 2022, in the amount of \$750.00, which was declined. The Agent for the Tenant stated that the e-transfer was declined by the Landlord. The Agent for the Landlord stated that this e-transfer was not declined by the Landlord.

In the list of e-transfers submitted by the Tenant, there is an email transfer from the Tenants to the Landlord, dated July 03, 2022, in the amount of \$800.00, which was

declined. The Agent for the Tenant stated that the transfer was declined by the Landlord. The Agent for the Landlord stated that this transfer was not received by the Landlord and it was not declined by the Landlord.

In the list of e-transfers submitted by the Tenant, there is an email transfer from the Tenants to the Landlord, dated July 03, 2022, in the amount of \$890.00, which was declined. The Agent for the Tenant stated that the transfer was declined by the Landlord. The Agent for the Landlord stated that this transfer was not received by the Landlord and it was not declined by the Landlord.

Analysis

On the basis of the undisputed evidence, I find that the Landlord entered into a tenancy agreement with "SK" and "RH". As the undisputed evidence is that the other Respondents named in the Tenants' Application for Dispute Resolution are children who did not signed the tenancy agreement, any Order issued in regard to these proceedings will not name those children as they are not parties to the agreement.

On the basis of the undisputed evidence, I find that the Tenants agreed to pay rent of \$1,700.00 by the first day of each month.

I find that the Tenants have failed to establish their claim that rent was increased to \$1,750.00 in March of 2022. In reaching this conclusion I was heavily influenced by the absence of any evidence that supports the testimony that rent was increased or that refutes the testimony that rent was not increased. As the Tenants are the ones alleging the rent increase, the Tenants bear the burden of proving there was a rent increase. As the Tenants have failed to establish that there was a rent increase, I find that the Tenants remain obligated to pay monthly rent of \$1,700.00.

I find that there is insufficient evidence to determine whether rent of \$1,650.00 was paid in rent for March of 2022, in cash, as the Agent for the Landlord testified or if rent of \$1,750.00 was paid in cash for that month, as the Agent for the Tenant testified. If I accepted the Tenants' submission, I would find there was an overpayment of \$50.00 for March of 2022 and if I accepted the Landlord's submission, I would find there was an underpayment of \$50.00 for March of 2022.

If the Tenants submission that they were not provided with a rent receipt for the March rent payment is true, there can be no reasonable expectation that they could have submitted a copy of a rent receipt.

If the Landlord's submission that the Tenants were provided with a rent receipt for the March payment, it is reasonable to expect that the Landlord has a copy of that receipt. In these circumstances, however, it was not reasonable to expect the Landlord to submit a copy of that receipt in response to the Tenants' Application for Dispute Resolution, as there is nothing in their Application to suggest the Tenants were disputing the rent payment from March of 2022. It is also not reasonable for the Landlord to submit a copy of that receipt in response to the Landlord's Application for Dispute Resolution, as the Landlords are not asserting that rent was unpaid for March of 2022.

I favor the testimony of the Agent for the Landlord, who stated that rent of \$800.00 was paid on April 08, 2022, by e-transfer; another \$700.00 was paid on April 12, 2022, by e-transfer; and another \$200.00 was paid on April 22, 2022, by e-transfer over the Agent for the Tenant's testimony that \$1,750.00 in rent was paid for April of 2022, in cash, on April 01, 2022.

While I accept that the Tenants would be unable to present a receipt for the April rent payment if one was not provided, I also find that it is difficult, if not impossible, for a landlord to provide evidence that rent was not paid when a tenant contends it was paid in cash. I therefore have not placed any great weight on the absence of a rent receipt for April's rent.

I have favored the testimony of the Agent for the Landlord, in large part, because the parties agree that a \$200.00 rent payment was sent to the Landlord, via e-transfer, on April 22, 2022. I find that this corroborates at least some of the Agent for the Landlord's testimony, who declared that rent of \$200.00 was paid by e-transfer on April 22, 2022.

Although the Landlord did not submit evidence of e-transfers made for April of 2022, I find it reasonable that they did not do so, as there was nothing in the Tenants' Application for Dispute Resolution that suggested rent for April was an issue and the Landlord did not claim compensation for rent from April in the Landlord's Application for Dispute Resolution.

I find that the e-transfer of \$200.00 of April 22, 2022 discredits the Tenants' submission that all their rent for April was paid, in full, on April 01, 2022. I find it highly unlikely that the Tenants would have paid an additional \$200.00 in rent on April 22, 2022 if their rent had been paid in full of April 01, 2022.

In concluding that the e-transfer of April 22, 2022 discredits the Tenants' submission that their rent was paid in full on April 01, 2022, I have placed little weight on the Agent for the Tenant's explanation that this payment "must have been" \$100.00 owing from March of 2022. I specifically note that this explanation was provided after I asked why this payment would have been made if rent for April had been paid in full.

When the parties were initially discussing rent payments, neither party declared that the rent for March was in arrears by \$200.00. Rather, the Agent for the Tenant testified that it had been overpaid by \$50.00 and the Agent for the Landlord testified that it was in arrears by \$50.00. It also does not explain why the Tenants paid \$200.00 for the newly alleged debt of \$100.00. I therefore find that this explanation lacks credibility.

As I find the Landlord's submission about rent paid for April to be more credible than the Tenants' submission, I find that the Tenants paid \$1,700.00 in rent for April of 2022. I do not accept the Tenants submission that there was an overpayment of rent for April, in the amount of \$50.00.

I favor the testimony of the Agent for the Landlord, who stated that rent of \$750.00 was paid for June on June 27, 2022, by e-transfer, over the Agent for the Tenant's testimony that \$1,550.00 in rent was paid, in cash, on June 04, 2022 and another \$190.00 was paid, in cash, on June 22, 2022.

While I accept that the Tenants would be unable to present a receipt for the June rent payment if one was not provided, I also find that it is difficult, if not impossible, for a landlord to provide evidence that rent was not paid when a tenant contends it was paid in cash. I therefore have not placed any great weight on the absence of a rent receipt for June's rent.

I have favored the testimony of the Agent for the Landlord, in large part, because the Agent for the Tenant testified that the Tenants sent an e-transfer of \$750.00 on June 27, 2022, which corroborates the Agent for the Landlord's testimony that \$750.00 was paid on June 22, 2022 by e-transfer. Although the Tenants contend that the Landlord declined this e-transfer, the Agent for the Landlord refutes that submission.

Although the Landlord did not submit evidence of the e-transfer received on June 27, 2022, I find it reasonable that they did not do so, as there was nothing in the Tenants' Application for Dispute Resolution that disputed this payment was made and the Landlord could not reasonably expect the Tenants would deny making this payment.

I find that the Tenant's submission that they e-transferred \$750.00 to the Landlord on June 27, 2022 discredits the Tenants' submission that the Tenants paid \$1,550.00 in rent on June 04, 2022 and another \$190.00 was paid, in cash, on June 22, 2022. I find it highly unlikely that the Tenants would have attempted to pay \$750.00 in rent on June 27, 2022 if they had already paid rent of \$1,550.00 on June 04, 2022.

As I find the Landlord's submission about rent paid for June to be more credible than the Tenants' submission, I find that the Tenants paid \$750.00 in rent for June of 2022. I do not accept the Tenants submission that the rent was paid in full on June 04, 2022 and I find that they still owe \$650.00 in rent for June of 2022.

I favor the testimony of the Agent for the Landlord, who stated that no rent was paid for July of 2022 over the testimony of "RH", who stated that rent of \$1,700.00 was paid on July 01, 2022.

While I accept that the Tenants would be unable to present a receipt for the July rent payment if one was not provided, I also find that it is difficult, if not impossible, for a landlord to provide evidence that rent was not paid when a tenant contends it was paid in cash. I therefore have not placed any great weight on the absence of a rent receipt for July's rent.

I find that the Tenant's submission that they e-transferred \$800.00 to the Landlord on July 03, 2022 discredits the Tenants' submission that the Tenants paid \$1,700.00 in rent on July 01, 2022. I find it highly unlikely that the Tenants would have attempted to pay \$800.00 in rent on July 03, 2022 if they had already paid rent of \$1,700.00 on July 01, 2022.

As I find the Landlord's submission about rent paid for July to be more credible than the Tenants' submission, I find that the Tenants have not paid rent for July and that they still owe \$1,700.00 in rent for July of 2022.

As I have found the Agent for the Landlord's testimony regarding the amount of rent paid in April, June, and July of 2022 to be more credible than the Agent for the Tenant's and/or "RH"'s testimony, I find it reasonable to conclude that the Agent for the Landlord's testimony regarding rent payments for August of 2022, September of 2022, October of 2022, November of 2022, December of 2022, and January of 2023 to also be more credible. I therefore accept the Agent for the Landlord's testimony that rent was not paid for those months over the Tenant's unsupported submission that rent for all of those months were paid in cash. I therefore find that the Tenants have not paid rent for the period between August 01, 2022 and January 31, 2023.

As I have found the Agent for the Landlord's testimony regarding the amount of rent paid in April, June, and July of 2022 to be more credible than the Agent for the Tenant's and/or "RH"'s testimony, I find it reasonable to conclude that the Agent for the Landlord's testimony regarding rent payments for May of 2022 are also more credible.

I note that the list of e-transfers submitted by the Tenants does not, in and of itself, have significant evidentiary weight. While it summarizes the oral testimony presented at the hearing by the Agent for the Tenant and "RH", it does not establish the accuracy of that testimony. This list appears to be a list created by the Tenants and does not appear to be a record created by a financial institution. I therefore accept the Agent for the Landlord's testimony that rent of \$1,700.00 was paid for May of 2022 and I do not accept the Tenants' submission that rent for May was overpaid by \$50.00.

Section 46(1) of the *Act* permits a landlord to 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. On the basis of the undisputed testimony of the Agent for the Landlord, the Agent for the Tenant, and "SK", I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on August 03, 2022. I find that this Notice served as proper notice that the Landlord wished to end the tenancy pursuant to section 46 of the *Act*.

In assessing the credibility of the parties I was guided, in part, by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround

the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Tenants to be unlikely. I find it unlikely that the Tenants would have continued to pay rent, in cash, after they were served with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on August 03, 2022. I find it highly unlikely that any tenant would continue to pay rent, in cash, without receiving a receipt, when the tenant was fully aware the landlord was alleging rent was not being paid. In such circumstances, I would expect a tenant would find a method of paying rent that enabled them to prove rent was paid.

As I have concluded that the rent that was due on August 01, 2022 had not been paid, I find that the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act* by serving the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I therefore dismiss the Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2022.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*. I specifically note that this Order of Possession is being granted on the basis of the Tenants' Application for Dispute Resolution.

As the Landlord has been granted an Order of Possession on the basis of the Tenants' Application for Dispute Resolution, I find there is no need to consider whether the Landlord is entitled to an Order of Possession on the basis of the Landlord's Application for Dispute Resolution. By doing so, I have ensured that the Tenants have not been significantly disadvantaged by not receiving the Application for Dispute Resolution that was mailed to them by the Landlord.

As the Landlord has been granted an Order of Possession on the basis of the Tenants' Application for Dispute Resolution, I find there is no need to determine whether the Tenants received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 02, 2022, which the Agent for the Landlord declared was posted on the door of the rental unit on September 02, 2022.

Pursuant to section 68(2)(a) of the *Act*, I order that this tenancy ended on the date of the hearing, which was January 13, 2023, rather than the declared effective date on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2022.

Section 55(1.1) of the *Act* stipulates that if an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

As the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I must grant the Landlord a monetary Order for all rent due up to the January 13, 2023, which is the date I have declared to be the end of the tenancy. I have not granted a monetary Order for any period after January 13, 2023, as that would not be considered unpaid rent. The Landlord retains the right to file another Application for Dispute Resolution for any lost revenue that accrues as a result of the Tenants remaining in the rental unit after January 13, 2023.

As has been previously stated, I find that the Tenants owe \$650.00 in rent for June of 2022, \$1,700.00 in rent for July of 2022; \$1,700.00 in rent for August of 2022; \$1,700.00 in rent for September of 2022, \$1,700.00 in rent for October of 2022; \$1,700.00 in rent for November of 2022, and \$1,700.00 in rent for December of 2022. I also find that the Tenant owe per diem rent of \$712.79 for the first 13 days of January (13 X 54.83) This is a total of \$11,562.79.

As the Landlord has been granted a monetary Order for unpaid rent on the basis of the Tenants' Application for Dispute Resolution, I find there is no need to consider whether the Landlord is entitled to a monetary Order of the basis of the Landlord's Application for Dispute Resolution. By doing so, I have ensured that the Tenants have not been significantly disadvantaged by not receiving the Application for Dispute Resolution that was mailed to them by the Landlord.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing the Landlord's Application for Dispute Resolution.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss their application to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The issues in dispute in the Tenants' Application for Dispute Resolution which were not severed from the Application for Dispute Resolution are dismissed, without leave to reapply.

The Tenants retain the right to file another Application for Dispute Resolution in regard to the issues that were severed from the Tenants' Application for Dispute Resolution.

I grant the Landlord an Order of Possession that is **effective two days after it is served upon the Tenants**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order for unpaid rent, **in the amount of \$11,562.79 in compensation for unpaid rent and \$100.00 for the cost of filing an Application for Dispute Resolution**. In the event the Tenants do not comply with this monetary Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 14, 2023

Residential Tenancy Branch