



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, CNC-MT, RP, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants (the Application) under the *Residential Tenancy Act* (the Act), on January 20, 2023, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- An extension to the time limit set out under section 46(4) of the Act for disputing the 10 Day Notice;
- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- An extension to the time limit set out under section 47(4) of the Act for disputing the One Month Notice;
- An order for the Landlord to make repairs to the unit, site, or property;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- Authorization to change the locks to the rental unit;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on February 21, 2023, and was attended by the Landlord and their spouse G.G., both of whom provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding (NODRP) states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into

the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct and I note that the Landlord and their spouse were able to attend the hearing promptly. Although the Landlord and their spouse stated that the Tenants never served them with a copy of the NODRP as required, and that they only received the hearing information from the Residential Tenancy Branch (the Branch) after contacting the Branch, the Landlord and their spouse still attended the hearing at the scheduled time, ready to proceed.

Despite the lack of service of the NODRP on the Landlord by the Tenants, the Landlord was able to obtain the hearing information from the Branch, attended the hearing on time, and expressed their desire to continue with the proceeding as scheduled. The Landlord and their spouse were therefore provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for the 36-minute duration of the hearing, neither the Tenants nor an agent acting on their behalf appeared at the hearing to provide evidence or testimony for my consideration.

The Landlord and their spouse were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord and their spouse were asked to refrain from speaking over myself and any other participants, should they attend, and to hold their questions and responses until it was their opportunity to speak. The Landlord and their spouse were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord, their spouse, and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that 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 neither the Tenants nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety, without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act and/or a Monetary Order for unpaid rent and utilities pursuant to section 55(1.1) of the Act, as even though the Tenants filed the Application disputing the 10 Day Notice and the One Month Notice, landlords bear the burden of proof in relation to notices to end tenancy.

Preliminary Matters

The Landlord and their spouse stated that as they were never served with the NODRP by the Tenants, they were not provided a proper opportunity to prepare for the hearing and submit documentary evidence for my review and consideration. I note that the Tenants did not submit a complete copy of the 10 Day Notice for my review, and I must verify that the 10 Day Notice complies with section 52 of the Act to issue the Landlord an Order of Possession due to dismissal of the Tenants' Application. As a result, and given that I am satisfied that the Landlord was not given proper notice of the hearing by the Tenants and was therefore denied a proper opportunity to submit evidence, I provided the Landlord with the opportunity to submit a complete copy of the 10 Day Notice for my review after the end of the teleconference.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities pursuant to sections 55(1.1) and 67 of the *Act*?

Background and Evidence

Neither the Tenants nor the Landlord submitted a copy of the tenancy agreement for my review and consideration. However, the Landlord and their spouse stated at the hearing that a written tenancy agreement exists, that the fixed term tenancy commenced on August 1, 2021, and became month to month on the expiration of the fixed term on February 1, 2023. The Landlord and their spouse stated that rent in the amount of \$3,000.00 is due on the first day of each month, and that a \$1,500.00 security deposit was paid, which they still hold in trust. The Landlord and their spouse stated that the Tenants rented an entire single-family home, and that they were responsible for utilities under the tenancy agreement, which would be billed to the Landlord and recoverable by them from the Tenants via written demand letter.

At the hearing the Landlord stated that when January rent and the outstanding utilities covered by a demand letter issued on December 5, 2022, were not paid as required, the 10 Day Notice was posted to the door of the rental unit by the Landlord and their spouse on January 13, 2023. As only the first page of the 10 Day Notice was submitted by the Tenants for my consideration, I verified that the details shown on the first page were correct, and accepted affirmed testimony from the Landlord and their spouse regarding what was stated on the second page. The Landlord and their spouse stated that the second page of the 10 Day Notice stated that \$3,000.00 in rent, which was due on January 1, 2023, was outstanding, along with \$360.00 in utilities covered by a demand letter served on December 5, 2022.

In the Application the Tenants stated that the 10 Day Notice was received by them on January 13, 2022. The first page of the 10 Day Notice in the documentary evidence before me, appears to be on a 2021 version of the Branch form, is signed and dated by the Landlord January 13, 2022, and has an effective date of January 23, 2023. The Landlord and/or their spouse called into the Branch shortly after the hearing, to provide their own file number to an information officer presumably so that I could obtain a complete copy of the 10 Day Notice from that file. That file number has been recorded on the cover page of this decision. A copy of the 10 Day Notice was also subsequently uploaded to the Tenant's file for my review and consideration as requested. The second page of the 10 Day Notice states that the Tenants failed to pay \$3,000.00 in rent that was due on January 1, 2023, as well as \$360.00 in utilities for which a written demand letter was issued on December 5, 2022.

The Landlord and their spouse stated that no rent or utilities have been paid since the issuance of the 10 Day notice and that the Tenants currently owe \$6,000.00 in outstanding rent for January and February of 2023, plus the \$360.00 in utilities. The Landlord therefore sought authorization to withhold the \$1,500.00 security deposit towards the amounts owed, a Monetary Order for the balance remaining, and an Order of Possession for February 28, 2023.

No one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for consideration or to point to any documentary evidence before me.

Analysis

Based on the affirmed and undisputed testimony of the Landlord and their spouse, I am satisfied of the following:

- a tenancy to which the Act applies exists between the parties;
- rent in the amount of \$3,000.00 is due on the first day of each month;
- the Tenants are responsible for the cost of utilities, which are to be billed in the Landlords name and paid to the Landlord by the Tenants not more than 30 days after a demand letter for their payment is served on them in writing;
- the Tenants have not paid any rent for January or February of 2023; and
- the Tenants have not paid the \$360.00 in utilities set out on the 10 Day Notice.

Section 46 of the Act states that 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 and that a notice under this section must comply with section 52 of the Act with regards to form and content. Section 46(6) of the Act also states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under section 46 of the Act.

Based on the undisputed and affirmed testimony of the Landlord and their spouse, as well as the statements made by the Tenants in the Application, I am satisfied that the 10 Day Notice was posted to the door of the rental unit on January 13, 2023, and received by the Tenants that same date. The Tenants did not file the Application seeking cancellation of the 10 Day Notice until January 20, 2023, which is more than 5 days after the date I am satisfied they received it, and although they sought an extension to

the timeline for disputing the 10 Day Notice, neither the Tenants nor an agent acting on their behalf appeared at the hearing to provide any evidence or testimony regarding what exceptional circumstances, if any, prevented them from applying on time. As a result, I find that the Tenants failed to dispute the 10 Day Notice within the timeline set out under section 46(4) of the Act and that they are not entitled to an extension of that time limit pursuant to section 66 of the Act. As a result, and as I accept the undisputed affirmed testimony of the Landlord and their spouse that no rent has been paid since the issuance of the 10 Day Notice, I find that conclusive presumption under section 46(5) of the Act applies. Despite this finding, the Landlord sought an Order of Possession for February 28, 2023, at the hearing.

Based on the above, and as I am satisfied that the 10 Day Notice complies with the form and content requirements set out under section 52 of the Act, I therefore find that the tenancy ends on February 28, 2023, at 1:00 P.M., pursuant to sections 55(1) and 68(2) of the Act and Residential Tenancy Branch Policy Guideline (Policy Guideline) #3, and I grant the Landlord an Order of Possession for the rental unit for that date and time. Given this finding, I do not find it necessary to make any further findings of fact or law in relation to the One Month Notice.

I also find that the Landlord is entitled to \$6,000.00 in outstanding rent up to and including February 28, 2023, and \$360.00 in utilities. At the Landlord's request and pursuant to section 72(2)(b) of the Act, I permit the Landlord to retain the Tenants' \$1,500.00 security deposit towards the above owed amount. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$4,860.00 for the balance remaining, and I order the Tenants to pay this amount to the Landlord.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

Pursuant to sections 55(1) and 68(2) of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on February 28, 2023**. The Landlord is provided with this Order in the above terms and 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.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,860.00**. The Landlord is provided with this Order in the above terms and 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 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 Branch under Section 9.1(1) of the Act.

Dated: February 21, 2023

Residential Tenancy Branch