



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, LAT, OLC, FFT
 CNR, RR, RP, LRE, LAT, OLC, FFT

Introduction

This hearing convened as a result of two Tenant's Applications for Dispute Resolution. In the first, filed on September 21, 2022, the Tenants sought the following relief:

- an Order for monetary compensation from the Landlords in the amount of \$9,000.00;
- an Order restricting the Landlord's right to enter the rental unit;
- an Order that the Tenants be permitted to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations* and/or the residential tenancy agreement; and
- recovery of the filing fee.

In the second Application, filed on December 14, 2022, the Tenants sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent issued on December *, 2022 (the "Notice");
- an Order that the landlord make repairs to the rental unit;
- an Order restricting the Landlord's right to enter the rental unit;
- an Order that the Tenants be permitted to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations* and/or the residential tenancy agreement; and
- recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on February 7, 2023. The line remained open while the phone system was monitored for eighteen minutes and the only participants who called into the hearing during this time was the Respondent Landlord and her legal counsel. The Tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, her legal counsel, and I were the only ones who had called into this teleconference.

Analysis and Conclusion

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rules 7.1, 7.3 and 7.4 address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenants did not call into the hearing by 9:48 a.m, and the Landlord appeared and was ready to proceed, **I dismiss both the Tenants' claims without leave to reapply.**

Section 55 of the *Residential Tenancy Act* provides as follows:

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.

(1.1)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.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. As I have dismissed the Tenants' Application, and pursuant to section 55(1) I grant the Landlord an Order of Possession effective **two days** after service upon the Tenants. This Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

On the Application the Tenants submitted that they withheld their December rent as the Landlord accepted more than 50% of the rent as a security deposit, expecting the last month to be paid in advance.

The Landlord testified that the Tenant's overpayment of the security deposit was applied to the September 2022 rent. The Landlord further testified that the Tenants failed to pay the December 2022 rent, the January 2023 rent and the February 2023 rent.

I accept the Landlord's testimony as to the rent due as of the time of the hearing; as such, and pursuant to section 55(1.1) I also award the Landlord a Monetary Order for the amount of **\$25,500.00** representing the amounts owing from the Tenants to the Landlord for unpaid rent. This Order must also be served on the Tenants and may be enforced in the B.C. Provincial Court.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 07, 2023

Residential Tenancy Branch