



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1342173 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, MNDCT, RR, RP**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act; and,
4. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Landlord, Property Manager and two Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's November 10 Day Notice personally served on November 5, 2022, the Tenant confirmed receipt, served on November 5, 2022;

- the Landlord's December 10 Day Notice personally served on December 8, 2022, the Tenant confirmed receipt, served on December 8, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package and evidence personally served on November 26, 2022, the Landlord confirmed receipt, served on November 26, 2022;
- the Tenants' Amendment personally served on December 8, 2022, the Landlord confirms receipt, served on December 8, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

The parties confirmed that they entered into a Mutual Agreement to End Tenancy on April 1, 2023. The Landlord requests an Order of Possession for the mutually agreed upon end date.

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the 10 Day Notices. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's request to amend their original application from \$2,000.00 in the November 10 Day Notice to \$9,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession and a Monetary Order for the Landlord's 10 Day Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 1, 2022. The fixed term ended on August 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent began at \$2,200.00 payable on the first day of each month. On June 1, 2022, monthly rent was reduced to \$2,000.00. On November 1, 2022, monthly rent was reduced to \$1,800.00. No security deposit or pet damage deposit was collected at the start of the tenancy.

The Tenants stopped paying rent beginning in November 2022 because they stated the rental unit needed repairs. They also have not paid rent for December, January, February, and March. The total unpaid rent owing is \$9,000.00. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$9,000.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of 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.*
- ...

The Tenants were personally served with the November 10 Day Notice on November 5, 2022. I find that the November 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on November 9, 2022 which was within the 5 days after receiving the 10 Day Notice.

The Landlord submitted that the Tenants stopped paying rent starting in November 2022. They stated that the Tenants owe \$9,000.00 in unpaid rent. The Tenants stated they stopped paying rent because the rental unit needed repairs. Section 26(1) of the Act is clear that a tenant must pay rent when rent is due. The Tenants are not permitted to withhold rent because of needed repairs unless they have an Arbitrator's order. I find the Landlord has proven that their November 10 Day Notice is valid, and I dismiss the Tenants' application to cancel the Landlord's notice to end.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

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.*
- (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 upheld the Landlord's 10 Day Notice. The Landlord and Tenants have already entered into a Mutual Agreement to End Tenancy and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective on April 1, 2023 at 1 p.m.

The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$9,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. I grant the Landlord a Monetary Award totalling \$9,000.00.

Conclusion

The Landlord is granted an Order of Possession, which will be effective on April 1, 2023 at 1 p.m. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$9,000.00. 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 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 Act.

Dated: March 23, 2023

Residential Tenancy Branch