



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, MNRT, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenants applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act
- For a monetary order for compensation for emergency repairs pursuant to section 33 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord KK appeared along with advocate PK and counsel CD. The tenants did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated the tenants were served with the 10 Day Notice by registered mail November 18, 2022. The landlord provided proof of service of the delivery date and the Canada Post tracking number in evidence. Pursuant to sections 88 and 90 of the Act the tenant is deemed to have been served with the notice on November 23, 2022 in accordance with the Act

The landlord further stated they served the dispute notice on the tenants by registered mail on December 9, 2022 and provided proof of service in evidence including photos of the documents mailed to the tenants and a Canada Post delivery receipt. I find the tenants served in accordance with sections 89 and 90 of the Act on December 14, 2022.

The landlord also served evidence on the tenants by registered mail on February 27, 2023 but did not provide proof of service in evidence. Relying on the submissions of landlord's counsel regarding service I find the tenants served in accordance with sections 88 and 90 of the Act on March 4, 2023.

Preliminary Issue

The landlord advised that there is an additional tenant listed on the tenancy agreement and that tenant was named in their dispute notice but not in the tenants' dispute notice. The landlord advised that they have no information to suggest that the additional tenant listed on the agreement no longer lives there. Furthermore the landlord provided proof of service evidence in respect of both tenants. I find it appropriate to amend the application to include the additional tenant.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?
2. Are the tenants entitled to a monetary order for compensation for emergency repairs?
3. Is the landlord entitled to a monetary order for compensation for unpaid rent?
4. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced August 1, 2017 and is currently month to month. The rent is currently \$1,695.00 per month due on the first of the month. The landlord holds a security deposit of \$850.00. The tenants still occupy the rental unit.

The landlord requested a monetary order for unpaid rent. The landlord acknowledged that their request details unpaid rent more than the limits allowed for a monetary order under the Act. However the landlord specifically waived her right to claim for unpaid rent in excess of \$35,000.00. The landlord produced a monetary order worksheet and a schedule of unpaid rent as outlined below:

Year	Amount owing	Amount of partial payment(s) received	Balance owing
2020	\$16,950.00 (10 mo)	\$4,200	\$12,750.00
2021	\$20,340.00 (12 mo)	\$0.00	\$20,340.00
2022	\$20,340.00 (12 mo)	\$0.00	\$20,340.00
2022	\$5,085.00 (3 mo)	\$0.00	\$5,085.00
		Total rent owing	\$58,515.00

The landlord stated that she did not issue a 10 Day Notice earlier because she was unsure of the Covid rules regarding ending a tenancy.

Analysis

The tenants did not appear. Their application for dispute resolution is dismissed.

The 10 Day Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it

stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

Section 55(1.1) of the Act requires me to issue a monetary order for unpaid rent if I find that the landlord's 10 Day notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenants' application. Both of those requirements are present here and therefore I grant the landlord's application for compensation and issue a monetary order to the landlord.

Based on the undisputed evidence of the landlord and relying on the landlord's schedule of unpaid rent, I find that the tenants owe unpaid rent in excess of the \$35,000.00 compensation limit imposed by the Act..

Section 7 of the Act states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 55(1.1) of the Act requires me to issue a monetary order for unpaid rent if I find that the landlord's 10 Day notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenants' application. Both of those requirements are present here and therefore I grant the landlord's application for compensation and issue a monetary order to the landlord. The landlord has not satisfied me based on the evidence of unpaid rent for many months that she acted reasonably in issuing the 10 Day Notice. The landlord testified the notice was not issued earlier due to Covid rules. Considering the rules imposed by Covid, I find the landlord is entitled to entire amount of rent owed in 2020, as well as rent owed for the first six months of 2021. I find that after that time the Covid rules allowed for the landlord to issue a notice to end tenancy. She did not issue the 10 Day Notice until December 9, 2022. I find she did not satisfy her duty to mitigate her loss. Based on the calculations provided by the landlord, the landlord is entitled to compensation of \$22,740.00.

The landlord's application for unpaid rent is granted. The landlord is entitled to compensation for unpaid rent until June 30, 2021.

As the landlord is successful in her application, she is entitled to recover the \$100.00 filing fee for the application.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$22,840.00 in recovery of unpaid rent and the filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 22, 2023

Residential Tenancy Branch