



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover the cost of the filing fee under section 72 of the Act.

R.T. attended for the Landlords, with their Translator. E.D. and J.S. attended for the Tenants. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

E.D. testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlords on March 3, 2023 via registered mail. The Tenants provided a copy of the Canada Post tracking number and the receipt for payment. The tracking numbers are provided on the front page of this Decision.

R.T. confirmed receipt of the Materials. Therefore, I find that pursuant to section 89 of the Act that Tenant’s Materials were sufficiently served to the Landlords.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Though a copy of the written tenancy agreement was not entered into evidence by either party, both parties agreed on the following regarding the tenancy. The tenancy started on September 18, 2022, rent is \$3,150.00 per month due on the first day of the month. A security deposit of \$1,750.00 was paid by the Tenants, which the Landlords still hold. The Tenants still occupy the rental unit.

R.T. testified that rent for January 2023 and February 2023 was only partially paid by the Tenants. The Tenants paid \$1,400.00 around February 4 or 5, 2023. The Notice was served in-person on February 18, 2023 and at that time, \$2,170.00 was owing in unpaid rent. Rent due on March 1, 2023 was unpaid in its entirety.

E.D. testified that there had been ongoing issues with the sump pump in the rental unit since December 10, 2022. It was releasing fumes into the unit making it smell of sewage. They stated the previous downstairs tenants had organized a plumber to fix the issue on December 21, 2022, but the smell continues.

Though only the first page of the Notice was entered into evidence by the Tenants, E.D. confirmed all three pages were served onto them.

E.D. confirmed that the Tenants had not paid for the plumber themselves and did not dispute that unpaid rent was owed to the Landlords. Both parties agreed that a total of \$5,320.00 was owed by the Tenants in unpaid rent to the Landlords, as of March 1, 2023.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by tenants can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the Regulation;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

Whilst the Tenants provided testimony regarding plumbing issues which, in and of themselves, may have fallen into one of the categories of repairs outlined in section 33 of the Act, it was confirmed during the hearing that the Tenants had not paid for any repairs themselves. Therefore, I find that the Tenants were not entitled to withhold rent for reimbursement of costs incurred for emergency repairs per section 33(7).

The Tenants put forward no evidence to indicate that any other of the above circumstances are applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amount of \$3,150.00 was due on February 1, 2023.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Testimony from both parties confirm that the Tenants did not pay the rent in full due on February 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

Though the Notice omits the unit number and S.D.'s last name, I exercise my authority under section 68 of the Act to correct these omissions on the Notice.

As both parties confirmed the Notice was served in-person on February 18, 2023, I also exercise my authority under section 68 of the Act to correct the date the Notice was signed, to ready February 18, 2023, not February 28, 2023.

Therefore, I find that the Notice complies with the form and content requirements of section 52 of the Act.

As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlords are granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision. It is the Landlords' obligation to serve the Order of Possession on the Tenants. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that court.

The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on February 28, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$5,320.00 in unpaid rent to the Landlords.

Under section 38(4)(b) of the Act, the Landlords are ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The Order is summarized below.

Item	Amount
Unpaid rent	\$5,320.00
Less: security deposit	(\$1,750.00)
Total	\$3,570.00

As the Tenants' Application was not successful they must bear the cost of the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

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 24, 2023

Residential Tenancy Branch