



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910103562: CNR, MNDCT, RR, RP, OLC

File #910103700: CNR, RP, OLC

Introduction

The Tenants seeks the following relief under the *Residential Tenancy Act* (the “Act”) after filing two applications:

- orders pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 6, 2023 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- orders pursuant to s. 32 for repairs; and
- orders pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

T.I. appeared as the Landlord. Neither Tenant attended the hearing.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend the hearing for their own application, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 1:19 PM without their participation.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord acknowledges receipt of the Tenants' application materials. Pursuant to s. 71(2) of the *Act*, I find that the Tenants' application materials were served on the Landlord.

The Landlord advises that he served the Tenant with his evidence via email on March 19 or 25, 2023. I enquired whether email was an approved form of service and was told by the Landlord that it was. I accept the Landlord's undisputed testimony that email is an approved method of service between the parties.

The Landlord failed to provide specific evidence on when his evidence was sent via email. This point is relevant because if it was sent on March 25, 2023 the deemed receipt provision set by s. 44 of the Regulation would result in deemed receipt on March 28, 2023. Rule 3.15 of the Rules of Procedure requires respondents, which in this case means the Landlord, to serve their evidence and that it be received no less than seven days prior to the hearing. As the hearing occurred on April 3, 2023, the last date it could have been received was March 27, 2023.

In the absence of any clarity on this point, I am unable to make a finding on whether the Landlord's evidence was, in fact, served on time. Despite this finding, a letter dated March 6, 2023 in the Landlord's evidence is included as I am told by the Landlord that it was served with the 10-Day Notice such that I am satisfied that it was received by the Tenants within the proscribed timeframes. All other evidence served by the Landlord is otherwise excluded as the Landlord has failed to demonstrate service.

Preliminary Issue – Tenants' Claims

The onus to prove the various claims in the Tenants' applications differs. The Landlord bears the burden of proving that the 10-Day Notice is enforceable. As applicants, the Tenants bear the burden of proving the remaining claims. The differing onuses of proof is explained by Rule 6.6 of the Rules of Procedure.

By failing to attend the hearing to make submissions in support of their application, I find that the Tenants have failed to prove their claims under ss. 67 (monetary compensation), 62 (order that the landlord comply), 65 (rent reduction), and 32 (repairs) of the *Act*. I hereby dismiss these claims without leave to reapply.

The hearing proceeded strictly on the question of the enforceability of the 10-Day Notice.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an order for unpaid rent?

Evidence and Analysis

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.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on April 1, 2022.
- Rent of \$2,100.00 is due on the first of each month.
- A security deposit of \$1,050.00 was paid by the Tenants.

I am provided with a copy of the tenancy agreement by the Tenants.

The Landlord advises that he served the 10-Day Notice on the Tenant by posting it to Tenant's door on March 6, 2023. I accept the Landlord's undisputed evidence on service of the 10-Day Notice and find that it was done in accordance with s. 88 of the *Act*.

I am provided with a copy of the 10-Day Notice by the Tenant and a letter dated March 6, 2023, which as mentioned above I am told was served with the 10-Day Notice such that it is included in evidence. The 10-Day Notice lists arrears of rent as of March 1, 2023 as \$6,650.00 and unpaid utilities of \$1,205.74.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The Landlord affirms that the payment history outlined in the March 6, 2023 letter is an accurate reflection of payments received and that no rent was paid by the Tenants on April 1, 2023. I accept the Landlord's undisputed evidence that the payment history set out in the letter is accurate and that the Tenants failed to pay rent at all on April 1, 2023. Accordingly, I find that the Tenants failed to pay rent as follows:

Month	Rent Due	Rent Paid	Arrears
September 2022	\$2,100.00	\$1,050.00	\$1,050.00
October 2022	\$2,100.00	\$2,100.00	\$0.00
November 2022	\$2,100.00	\$1,050.00	\$1,050.00
December 2022	\$2,100.00	\$1,050.00	\$1,050.00
January 2023	\$2,100.00	\$0.00	\$2,100.00
February 2023	\$2,100.00	\$1,000.00	\$1,100.00
March 2023	\$2,100.00	\$1,800.00	\$300.00
April 2023	\$2,100.00	\$0.00	\$2,100.00
Total Arrears			\$8,750.00

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* permits specific circumstances in which money may be withheld from rent. As the Tenants, did not attend the hearing to provide submissions on the circumstances for which rent was withheld, I find that they were not permitted to do so.

I find that the Landlord has demonstrated that the 10-Day Notice was properly issued in compliance with s. 46 of the *Act*. Accordingly, I find the 10-Day Notice enforceable and dismiss the Tenants' application to cancel it.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession with that order being effective two days after the Tenant's receive it.

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. As that is the case here, I grant the Landlord an order for unpaid rent as found above totalling \$8,750.00.

Looking at the question of unpaid utilities, s. 46(6) of the *Act* permits utilities to be treated as unpaid rent provided the tenancy agreement requires the tenant pay utilities and the utilities remain unpaid 30 days after the tenant receives written demand for their payment. In this instance, I am provided no proof of written demand for the payment of utilities. In the absence of this evidence, I find that I cannot treat the utilities as unpaid rent. As such, I decline to grant an order for this amount under s. 55(1.1) of the *Act*.

Conclusion

I dismiss the Tenants' application to cancel the 10-Day Notice without leave to reapply. I further dismiss all the other claims in the Tenants' application without leave to reapply.

The Landlord is granted an order of possession pursuant to s. 55(1) of the *Act*. I order that the Tenants provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is granted an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenants pay **\$8,750.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme 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 *Residential Tenancy Act*.

Dated: April 05, 2023