



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, RR, OLC, FFT, 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 tenant applied as follows:

- For cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- For reimbursement of the filing fee pursuant to section 72 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

Both parties attended the hearing with the landlords being represented by landlord ZR with witness AF. The tenants, MP and CL appeared for themselves. 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 tenants confirmed receipt of the 10 Day Notice dated December 6, 2022 with an effective date of December 17, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with the 10 Day Notice in accordance with the Act

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The tenants advised at the outset of the hearing that they vacated the rental unit on January 6, 2023. I therefore dismiss the tenants' dispute of the 10 Day Notice, and their request for an order requiring the landlord to comply with the Act or tenancy agreement. I also dismiss the landlord's application for an order of possession for the rental unit.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to a rent reduction due to the landlord's failure to make repairs or provide services as required?
3. Is the landlord entitled to a monetary order for compensation for unpaid rent?
4. Is either party entitled to a reimbursement for their respective filing fees?

Background and Evidence

The tenancy commenced September 15, 2022 for a fixed term until September 15, 2023. Rent is \$2,400.00 per month and the landlord still holds a security deposit of \$1,200.00 and a pet deposit of \$600.00 in trust for the tenants. The tenants vacated the rental unit January 6, 2023.

Compensation for Unpaid Rent

The landlord stated that she is seeking compensation for unpaid rent in the amount of \$4,814.00. She provided a monetary order worksheet in evidence. The landlord

testified that both December 2022 and January 2023 rent was unpaid. The landlord stated that both the tenants' December 2022 and January 2023 cheques were NSF and therefore she is claiming the \$7.00 fee charged by the bank for both cheques. The landlord provided her bank statement in evidence showing that the tenants' rent payment did not go through for December 2022, and the statement also showed the \$7.00 bank fee charge. The landlord stated that she was able to rent the rental unit to another tenant February 1, 2023.

The tenants testified that they paid \$1,400.00 rent for the month of December by electronic transfer December 2, 2022 which was returned by the landlord on December 2, 2022. The tenants stated that the landlord advised them that their December rent cheque had cleared, so she returned the \$1,400.00 electronically transferred to her by the tenants. The landlord later advised them that their December 2022 rent cheque was returned NSF and she then issued the 10 Day Notice. The tenants believed that the landlord should have retained the electronic transfer sent by the tenants and then the landlord would not have been able to end the tenancy for unpaid rent. The tenants stated that they did not owe rent for January as the tenancy ended January 6, 2023 and they gave the landlord their notice to end the tenancy on December 6, 2022.

The landlord denied receiving a notice to end tenancy from the tenants. The landlord also stated in response that the 10 Day Notice issued on December 6, 2023 for unpaid rent gave the tenants five days to pay rent in full. The tenants did not pay rent after receiving the 10 Day Notice.

Rent Reduction

The tenants testified that they are claiming compensation for moving and storage costs as a result of the landlord ending the tenancy and breaking their fixed term lease. The tenants stated they initially made the claim as a result of items not functioning properly in the rental unit, however the tenants stated during the hearing that they were no longer claiming for those items, but instead wished to recoup their moving expenses. The tenants did not produce receipts in evidence.

The landlord stated that she is not responsible for the tenants' moving costs as the tenancy ended because the tenants did not pay rent.

Analysis

RTB Rules of Procedure 6.6 states, "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.

Compensation for Unpaid Rent

The landlord has the onus to establish that she is entitled to compensation for unpaid rent. The landlord provided a monetary order worksheet showing rent unpaid for December and January as well as the fees for the NSF cheques. The landlord also provided her December 2022 bank statement showing that the tenants' rent cheque was NSF.

The tenants did not deny that they did not pay full rent for December 2022 or for January 2023. However, they claimed that the landlord should have retained the \$1,400.00 electronic transfer sent by the tenants and then the tenancy would not have ended. Further they stated that they gave the landlord notice to end the tenancy December 6, 2022. I find that the tenants did not pay rent in full for December 2022 which justified the issuance of the 10 Day Notice, which is no longer in dispute. The tenants did not dispute the landlord's evidence that the tenants did not pay rent for December 2022 and January 2023. The tenants did not dispute that the rent cheques were NSF and the landlord was charged \$7.00 for each cheque. Therefore I find that the landlord has satisfied her onus to establish that the tenants still owe December 2022 and January 2023 rent, and the bank fees charged for the NSF cheques.

Rent Reduction

The tenants have the onus to establish that they are entitled to a rent reduction because the landlord failed to make repairs or provided facilities or services as required. I decline to consider the tenants' request for compensation for storage and moving fees. The tenant did not list this as a ground of compensation they were claiming on their application, either initially or by way of an amendment. I find that it would be unfair to the landlord to consider the tenants' claim as the landlord did not receive notice of the tenants' claim until the hearing commenced. The tenants' claim for compensation for a rent reduction is therefore dismissed.

As the landlord was successful in her application, she is entitled to recover the \$100.00 filing fee for the application. I will allow the landlord to retain the security and pet deposits in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order as follows:

Claim	Amount
Unpaid rent	\$4,800.00
Bank fees	\$14.00
Filing fee	\$100.00
Security and Pet Deposits	(1,800.00)
Total	\$3,114.00

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: April 22, 2023

Residential Tenancy Branch