



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on November 18, 2022 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent and utilities; and
- return of the filing fee pursuant to s. 72.

The Landlords’ application was filed as a direct request but was adjourned to a participatory hearing based on the decision of January 31, 2023.

T.S. appeared as the Landlord. B.Y. appeared as the Tenant.

The parties 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 advises that Tenant was served with the application and evidence by having it posted to the Tenant’s door on December 11, 2022 and February 3, 2023. The Tenant acknowledges receipt of the Landlords’ application materials. Based on the acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Tenant was sufficiently served with the Landlords’ application materials.

Issues to be Decided

- 1) Are the Landlords entitled to an order of possession?
- 2) Are the Landlords entitled to a monetary order for unpaid rent and utilities?
- 3) Are the Landlords entitled to their filing fee?

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 parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in October 2020.
- At the outset of the tenancy, rent of \$350.00 was due on Tuesday of each week. In March 2021, rent was changed such that the Tenant was to pay \$1,000.00 on the first of each month.
- No security deposit was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Landlord, which notes weekly rent. Written in the margins is that \$1,000.00 will be due on the first of each month as of March 2021. I note that the written note is not initialled by the parties. Clause 1 subparagraph 2) sets out that any change to the tenancy agreement must be in writing and initialled otherwise they are unenforceable. This section of the tenancy agreement is a standard term imposed by s. 12 of the *Act* and set out in the regulations.

I am told by the Landlord that since March 2021 rent had been paid monthly in the amount of \$1,000.00. The Tenant confirms he was paying \$1,000.00 in rent. I note that overall rent decreased under the new arrangement. Despite not having initialled the amendment to the tenancy agreement, I accept that by the parties' conduct rent was decreased and set to a monthly \$1,000.00 payment due on the first of each month. I further find that it would be unfair to reason otherwise as it would result in an increase in the Tenant's rent payments from March 2021 onwards, which is not in accordance with the parties understanding on the change in rent payments and practice since March 2021.

The Landlord advises that the 10-Day Notice was personally delivered to the Tenant on November 18, 2022. The Landlord's evidence includes proof of service of the 10-Day Notice. The Tenant acknowledges receipt of the 10-Day Notice on the 18th of November. I find that the 10-Day Notice was served on the Tenant in accordance with s. 88 of the *Act* and received by him on November 18, 2022.

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 under s. 46(1) of the *Act* that is effective no sooner than 10-days after it is received by the tenant.

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 provided to me by the Landlord 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).

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. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, I am advised by the Landlord and accept that the Tenant did not pay the amounts listed in the 10-Day Notice. Given this, s. 46(5) of the *Act* comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit on by the effective date of November 28, 2022.

As the Tenant continues to reside in the rental unit, I find that the Landlords have established that they are entitled to an order of possession under s. 55 of the *Act*. The order of possession will be effective two days after it is received by the Tenant.

The Landlords also seek an order for unpaid rent and utilities. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

I am advised by the Landlord that the Tenant failed to make rent payment in July 2022 and made \$500.00 payment on rent in August 2022. The Tenant denies this saying he paid in cash and had no receipts. The Landlords' evidence includes a note, signed by the parties on November 8, 2022, in which the Tenant acknowledges owing the Landlord \$1,500.00 in rent at that time. With respect to rent payments in July and August 2022, I prefer the Landlord's evidence. The Tenant's denial lacks credibility in light of the acknowledgement, signed by him on November 8, 2022, that he did owe \$1,500.00 in rent to the Landlords.

The Landlord further testified that the Tenant failed to pay rent from December 2022 to date. The Tenant states that he did pay rent in December 2022, though acknowledges he did not pay rent from January 2023 to date. Given my previous finding on credibility, I prefer the Landlord's evidence over the Tenant's and accept that he did not pay rent from December 2022 to date.

The Tenant advises that there were noise issues at the rental unit which resulted in his losing his job. It was not clear to me how this related to the tenancy or if the noise complaint was tied to a breach of the *Act* by the Landlords. Even if I were to assume the Landlords failed to address some maintenance or other issue related to the noise, it would not matter. As per 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.

I find that the Tenant failed to pay rent as alleged by the Landlord in breach of the tenancy agreement and s. 26 of the *Act*. I further find that the Landlords have suffered a loss proven by them to total \$5,500.00. Finally, I find that mitigation was impossible under the circumstances as the Tenant continued to reside in the rental unit beyond the effective date of the 10-Day Notice. The Landlords have established their claim for unpaid rent.

Looking next to utilities, I am told by the Landlord that the Tenant was responsible for paying electricity under the tenancy agreement. The tenancy agreement shows that electricity is the Tenant's responsibility. I am provided with electricity invoices from November 2021 to May 2022 totalling \$1,424.37 (\$547.35+\$557.80+\$319.22). The Landlord confirmed in his testimony that demand was made to the Tenant seeking payment of these amounts via text message. The Landlords' evidence including copies of the text messages. I was further advised by the Landlord that partial payment of \$423.00 was made by the Tenant on the utilities in March 2022. In the Landlords' claim, they seek \$1,000.00 for the utilities.

The Tenant confirms the Landlord's evidence with respect to utilities, though says that the amounts were high and attributable to consumption from others. The rental unit is an upper unit. I asked the Tenant if there was a separate meter for his unit. The Tenant confirmed that there was.

I find that the tenancy agreement establishes an obligation for the Tenant to pay electricity. I further find that the Tenant failed to pay for electricity despite his obligation to do so and despite the Landlords' demand for payment. I also note that the Tenant acknowledged the same in the signed acknowledgement of November 8, 2022, noting \$1,000.00 was owed for electricity. I find that the Landlords have demonstrated this portion of their claim and accept their claim is limited to what is stated in the application, which in this case was for \$1,000.00. The Landlords shall have an order for this amount.

In total, I find the Landlords have established a monetary claim totalling \$6,500.00.

I further find the Landlords are entitled to their filing fee as they were successful in their application. The Tenant shall pay the Landlord's \$100.00 filing fee.

Conclusion

I grant the Landlords an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

I grant the Landlords a monetary order under s. 67 of the *Act*. The Tenant shall pay the Landlords \$6,500.00 in unpaid rent and utilities.

I grant the Landlords their filing fee under s. 72(1) of the *Act*. The Tenant shall pay the Landlords' \$100.00 filing fee.

In total, I order that the Tenant pay **\$6,600.00** (\$6,500.00+\$100.00) to the Landlords.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does 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 Tenant does 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 13, 2023

Residential Tenancy Branch