



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenants,
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord attended the hearing; the tenants did not attend.

The landlord submitted documentary evidence and testimony showing, that the tenants were served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by email December 20, 2022. The landlord submitted that the parties communicated with each other throughout the tenancy by email, and that the tenant responded to the email sending the evidence package.

Based upon the landlord's oral and written submissions, I find the tenants were sufficiently serve the landlord's application and notice of hearing and the hearing proceeded on the landlord's application.

Thereafter the landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter #1 –

Near the conclusion of the hearing, after 9 minutes, someone who said they were appearing for the tenant called in and identified they were a friend of the tenant. The caller said the tenant asked they attend and request a short, 10 day adjournment, for the reason that a family member of the tenant had died and the tenant would be heading out for the funeral. The caller said there was no mobile phone service at the remote location where the funeral would be.

I declined to grant an adjournment for several reasons. The caller did not sufficiently identify they had authority to act on behalf of the tenant and the tenant did not provide a statement prior to the hearing or call to the RTB to seek an adjournment. The caller did not say when the tenant would leave for the funeral.

Apart from that, the landlord's evidence claimed that they had not received any rent from the tenants since the Notice was issued to the tenants in December 2022. I find it would be procedurally unfair to the landlord to grant the caller's request for an adjournment due to the serious allegations by the landlord that they have not received rent in 5 months.

Additionally, the landlord said that the caller sounded like the tenant, LK, and as there were also two tenants listed, I find there was insufficient evidence as to why the other tenant, CT, could not attend.

Preliminary and Procedural Matter #2 –

Despite having their own hearing scheduled for 11:00 pm on April 21, 2023 plus the landlord's application and notice of hearing, the tenants failed to attend the hearing. I also declined a caller's request to adjourn the hearing as I was not satisfied the caller represented the tenant's interests.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenants at the hearing, I order their application dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The evidence showed the tenancy began on November 1, 2022, monthly rent is \$1,700, due on the first day of the month, and the tenants paid a security deposit of \$850 at the beginning of the tenancy.

The landlord submitted evidence that on December 10, 2022, they served the tenants with the Notice, by attaching it to the tenant's door, listing a total unpaid rent of \$1,700 owed as of December 1, 2022. The effective vacancy date listed on the Notice was December 23, 2022. The Notice was filed into evidence.

The tenant in their application confirmed receiving the Notice on December 12, 2022.

The landlord explained that although the tenant's evidence showed an e-transfer for the monthly rent, they were not provided a password to collect the amount. In addition, the landlord submitted a copy of their banking records showing no payments of rent was deposited into their account.

The landlord submitted that since the Notice was issued to the tenant, the tenant has failed to pay any rent payment and owes a total of \$8,500 in unpaid monthly rent, as of the day of the hearing.

Analysis

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenants that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

As a result, I order the tenancy ended on December 13, 2022, the effective date of the Notice served to the tenants.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to, and I grant an order of possession effective 2 days after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **informed** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenants.

Monetary Order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenants owe an outstanding balance of \$8,500 in unpaid monthly rent, through the date of the hearing.

I find the landlord has established a monetary claim of **\$8,500**, for the unpaid monthly rent.

I also grant the landlord recovery of their filing fee of **\$100**.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$8,600**.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **informed** that costs of such enforcement are subject to recovery from the tenant.

Further, I authorize the landlord to keep the tenants' security deposit of \$850 to partially offset their monetary claim of \$8,600, if they choose.

Should the landlord keep the tenants' security deposit of \$850, the landlord is to deduct that amount from their monetary order of \$8,600.

Conclusion

The tenants' application is dismissed, without leave to reapply, due to their failure to attend the hearing and due to my denying a caller's request for an adjournment.

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 21, 2023

Residential Tenancy Branch