



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 542415 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDL-S, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenants;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- authority to keep the tenants' security deposit and pet damage deposit of \$850 each to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord's representative (landlord) and the tenants attended the teleconference hearing. The parties were affirmed, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The tenants confirmed receipt of the landlord's application and evidence. The tenants did not file evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Preliminary and Procedural Matters-

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the landlord's claim for damages is unrelated to the primary issue of considering the Notice. I find the landlord's claim for damages is premature as the tenancy has not ended and a tenant is allowed to correct any damage that is beyond reasonable wear and tear.

For this reason, I dismiss the landlord's claim for damages, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The landlord filed a written tenancy agreement showing a tenancy start date of March 2021, monthly rent of \$1,700, due on the last day of the month, and a security deposit of \$850 and pet damage deposit of \$850 paid by the tenants.

The landlord said that on December 14, 2022, the tenants were served with the Notice, by attaching it to the tenants' door, listing accumulated unpaid rent of \$2500 owed as of December 1, 2022. The effective vacancy date was not listed on the Notice. Filed in evidence was a copy of the Notice and proof of service.

The landlord stated that the tenants have not vacated the rental unit and did not pay the amount listed on the Notice within 5 days. The landlord said the tenants paid \$1500 on January 20, 2023, and another \$100 a few days later, but nothing since that date. As of

the date of the hearing, the tenants now owe the amount of \$9,775 in unpaid monthly rent, which included the rent for May 2023, according to the landlord.

Tenants' response –

The tenants did not deny the landlord's testimony, but said that they could pay a lump sum of \$9,000 if the landlord gave them until the end of the month to vacate.

In response to my inquiry, the tenants confirmed receiving the Notice as described by the landlord, which caused them to talk to the "Ministry", and the "Ministry" gave them a number to call. The staff at that number told the tenants to wait for the hearing, according to the tenants. The tenant said that they wanted to talk to me at the hearing, presumably about the offer to pay \$9,000 to the landlord. The tenants did not clarify the name of the Ministry or who they called.

In further response to my inquiry, the tenants understood the nature of the Notice served by the landlord.

In rebuttal, the landlord stated the tenants have been talking about a lump sum payment of \$9,000 for months, but have not made payment.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In considering section 68 of the Act, in addressing the landlord's deficient Notice, which included the missing effective end of tenancy date and the rental unit address to vacate, plus was on an out-of-date form, I find it reasonable to amend the landlord's Notice as I find the tenants knew, or should have known, the information was omitted. I find it reasonable due to the tenants seeking advice or information from a Ministry, which they did not name, but which led them to speak to another office. It is my finding the tenants understood the purpose of the Notice being served to them.

As to the Notice form that is not the current approved form used by RTB, section 10 of the Act states that the director may approve forms for the purposes of the Act, and deviations from the approved form that do not affect its substance and are not intended to mislead do not invalidate the form. I find all the required information necessary for

the 10 Day Notice was on the form used by the landlord and therefore, I find the Notice is not invalidated.

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 pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. The tenants confirmed not filing an application, and instead, claim they were told to go to the hearing.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the 10 Day Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service of the Notice on December 14, 2022.

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended 10 days after it was deemed served, in this case, December 17, 2022, three days after the Notice was attached to the tenants' door.

As a result, I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two 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 cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenants.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenants have yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenants now owe a total amount of unpaid rent of **\$9,775**, as stated by the landlord without dispute, through the day of the hearing on May 1, 2023, as the monthly rent was due on the last day of the month.

As a result, I find the landlord has established a monetary claim of **\$9,775**, for the outstanding unpaid monthly rent through May 2023, as noted above.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a total monetary claim of **\$9,875**, for the unpaid monthly rent and the filing fee, as noted above.

I direct the landlord to retain the tenants' security deposit of \$850 and the pet damage deposit of \$850, which was part of their claim, and deduct this amount of \$1,700 in partial satisfaction of the monetary award of \$9,875. I grant the landlord a **monetary order** for the balance due, pursuant to section 67 of the Act in the amount of **\$8,175**.

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 **cautioned** that costs of such enforcement are subject to recovery from the tenants.

Conclusion

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: May 01, 2023

Residential Tenancy Branch