



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNR-MT, MNDCT, DRI, OLC, FFT
Landlord: OPU, MNRL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 27, 2023. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s documentary evidence and applications.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the 10 Day Notice issued in November

2022.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following issues:

- an order of possession based on a 10-Day Notice from November 2022 (the Notice) for unpaid rent or utilities and whether or not the Tenants are entitled to have this Notice cancelled;
- Are the Tenants entitled to more time to file the application to cancel the Notice
- a monetary order for the Landlord for unpaid rent or utilities based off the Notice.
- Has an illegal rent increase been imposed

Issue(s) to be Decided

1. Is the Tenant allowed more time to make an application to cancel the 10-Day Notice?
2. Is the Tenant entitled to have the Notice cancelled?
3. Is the Landlord entitled to an order of possession for unpaid rent or utilities based off the Notice?
4. Has the Landlord imposed an unlawful rent increase?
5. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord explained that he bought the house in 2014, and he inherited this tenancy at that time. In 2014, Tenants were paying monthly rent in the amount of \$650.00. This continued until 2018, when the Tenants signed a new tenancy agreement, modifying some terms. Rent at that time was set to \$978.00, starting August 1, 2018. Then, the Tenants paid this amount until August 1, 2019, which is when one of the Tenants signed a new tenancy agreement with modified terms, and a monthly rent of \$1,120.00. The Tenants paid this amount until April 1, 2021, when they started paying \$1,650.00. The Tenants continued to pay \$1,650.00 until the fall of 2022.

The Tenants acknowledge the above noted amounts. The Tenants stated that they agreed with the Landlord to increase rent to \$1,120.00, effective August 1, 2019. They do not take issue with this amount, and assert that the increase to \$1,650.00 in April of 2021, was done unlawfully, without proper notice on an approved rent increase form, and they only started paying the increase to prevent themselves from being homeless. The Tenants pointed out that they purposefully did not sign any new tenancy agreement for the increased amount of \$1,650.00.

The Landlord stated that the Tenants paid \$1,650.00 up until October 2022, and in November they stopped paying rent. The Landlord stated the Tenants have no paid rent since that time and they continue to occupy the house.

The Landlord stated that he wishes to withdraw his claim for unpaid utilities, and focus on the issue of unpaid rent. The Landlord stated he was waiving the outstanding utilities that were noted on the Notice. The Tenants consented to this, and agreed to look at the Notice within the context of rent owing, not including utilities. The Notice was provided into evidence and the Tenants acknowledge receipt of the Notice on November 26, 2022.

The Tenants pointed out that when the Landlord approached them in March of 2021, to try to increase rent, he sent them an email saying they had one month to accept the increased rent, or he would sell the house, and they started paying the increased amount to prevent themselves from losing their house. The Tenants assert they overpaid rent in the amount of \$530.00 per month (\$1,650.00 - \$1,120.00) for a period of 19 months (April 2021 – October 2022), totalling \$10,070.00. The Tenants acknowledge that they have not paid rent since October 2022, and as of the time of this hearing, they owe 6 months rent. The Tenants assert their rent is currently \$1,120.00 since they were never given a proper rent increase notice.

The Tenants initially applied to cancel the November 26, 2022, Notice on December 2, 2022. However, that application was abandoned. The Tenants re-filed their application to cancel the Notice on January 3, 2023, and they applied for more time to file the application. The Tenants stated the following with respect to their application for more time:

"I already filed an application on Dec 2 – but it was abandoned and notice of this was emailed to me – it said I had forgotten to fill something out on my form. This email went to spam. I called RTB and was told to re-file and explain"

Analysis

I note the Tenants have applied for more time to make an application to cancel the 10-Day Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the 10 Day Notice must be addressed before considering the remainder of the application or the merits of the Notice.

Although the Tenants have stated that the Notice was served to a minor who lives in the house, and not the Tenants, pursuant to section 71(2)(b), I find the Tenants are sufficiently served with this Notice on November 26, 2022, which is the date they acknowledge receiving it.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

After reviewing the file, I note that the Tenant's application was not made until January 3, 2023. In this case, the Tenant did not apply within the allowable 5-day window, which lapsed around a month prior. The Tenants were significantly over the allowable time frame to dispute the Notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

On the Tenant's application, they stated they needed more time to file this application because their initial application, filed December 2, 2022, was abandoned, and they missed the emails that went to their junk mail filter. During the hearing, the Tenants did not elaborate on this matter any further.

I have considered the Tenant's application for more time. However, I note that the Tenants are asserting that they were late because their initial application was abandoned, and they missed some emails from the RTB. I note the tenants initially had 5 days to dispute the Notice, after receiving it on November 26, 2022, which means they had until December 1, 2022, to dispute the Notice. Even if the first application was acceptable and properly filled out, they would still be late. I find the Tenants have not provided a strong or compelling explanation as to why they were unable to file their dispute within 5 days of receiving the Notice. I find there is insufficient evidence to show that the Tenants' circumstances were exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and this late Application is therefore dismissed.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after service.

With respect to the amount of money owed pursuant to the Notice, I note the Landlord has waived the utility amounts. As such, I will not consider these amounts any further.

I have reviewed the testimony and evidence of the parties with respect to rent amounts over the years, and the rent increases. The only contested rent increase was the one from \$1,120.00 to \$1,650.00 effective April 1, 2021. The Tenants agreed to the previous one and didn't take issue with it.

Part 3 of the *Act* and Policy Guideline 37 to the *Act* explains the requirements a landlord **must** follow in order to affect a legal rent increase.

The *Act* requires a landlord to give to a tenant a notice of rent increase in the approved form at least **three** months before the effective date of the increase. The *Act* also requires that a landlord **must not** impose a rent increase that is more than the allowable limit which is calculated in accordance with the regulations. For 2021 this was 0%. This means that the Landlord was not entitled to raise the rent at all in 2021 and the rent increase for April 1, 2021, was unlawful and improper. I also find the Landlord failed to get the Tenant's consent in writing to increase the rent above the allowable amount. I do not find the Tenants payment of the increased amount equates to an agreement that this was an acceptable rent increase. In fact, it appears this was contentious, and the Tenants refused to sign the tenancy agreement at the higher rent amount.

Since the rent increase in April 2021 was unlawful, I find it is of no force or effect. I find the Tenants are entitled to recover their rent overpayments from April 2021 onwards. I

award the Tenants their overpayments of \$530.00 x 19 months (April 2021 – October 2022), totalling \$10,070.00. This amount will be offset from the current rent owed.

I note the Tenants acknowledge they failed to pay November 2022 – April 2023 rent. I find the Tenants owed \$1,120.00 x 6 = \$6,720.00 for those months.

After offsetting these two amounts, I find the Tenants are entitled to a monetary award of \$3,350.00.

I decline to award the recovery of either filing fee paid, since both parties were partially successful.

Conclusion

The Tenant's request for more time to make an application to cancel the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$3,350.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: May 2, 2023

Residential Tenancy Branch