



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT, CNR, MNDCT, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenants. On January 25, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 7, 2023, the Tenants made another Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant M.D. attended the hearing, and both Landlords attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Prior to addressing service of documents, the Tenant requested an adjournment and stated that it was because he had a disability, that he required legal counsel, and that the earliest availability for someone to help him would be after June 2023. When he was

asked when he first attempted to seek legal counsel for assistance, he testified that it was on April 26, 2023, but then changed his response to on or around April 17, 2023. Given that the first Application was made on January 25, 2023, he could not provide any suitable reason for why he waited months before seeking out assistance.

Landlord J.W. was asked for their position on this adjournment request, and he stated that they were not prepared to acknowledge this request as the Tenant has ample opportunity to seek out legal representation. As well, he refuted the Tenant's claim of a disability as the Tenant never raised this at any point during the tenancy. Moreover, he stated that the Tenant did not submit any documentary evidence to corroborate this claim.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. I note that the Tenant had ample time to obtain legal counsel and only chose to do so months after making the first Application. Had the Tenant required legal representation and sought this out in a reasonable timeframe, I would be more inclined to grant an adjournment, provided that there was some documentation of these efforts and some confirmation of the lack of availability of counsel. Moreover, had the Tenant taken action earlier instead of waiting to the last minute, the Tenant would have had more of an opportunity to locate another form of legal counsel if one would not have been available in time for this hearing.

As this hearing pertained to notices to end the tenancy, and as the criteria for an adjournment was not satisfactorily met by the Tenant, I determined that adjourning the hearing would be prejudicial to the Landlords. As such, I did not allow the Tenant's request for an adjournment. Furthermore, as will be outlined in this Decision below, the granting of an adjournment would not have had any impact when rendering this Decision, in any event.

The Tenant advised that the first Notice of Hearing packages were served to the Landlords by hand, but he was not sure when this was done. J.W. advised that they only received one Notice of Hearing package for the two of them in mid-February 2023, and that it was sent by registered mail. He had no position with respect to being only served one Notice of Hearing package for the both of them. Based on this undisputed testimony, I am satisfied that the Landlords have been duly served the Tenant's first Notice of Hearing package.

The Tenant then advised that he served his evidence for this first Application to the Landlords by hand the next week; however, he did not serve the digital evidence to the Landlords. J.W. confirmed that they actually received this documentary evidence in the Notice of Hearing package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Tenant's digital evidence was not served, I have excluded it and will not consider it when rendering this Decision.

J.W. advised that they served their evidence to the Tenant by hand in mid-March 2023, and the Tenant confirmed that he received this. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant then advised that the second Notice of Hearing packages were served to the Landlords by registered mail on or around March 9, 2023, and that he "believed" that his evidence was included in those packages. J.W. confirmed that the two Notice of Hearing packages were received, but there was no documentary evidence included. Based on this testimony, I am satisfied that the Landlords have been duly served the Tenant's second Notice of Hearing packages. However, as it was evident that the Tenant was uncertain about this service, and as it appears as if no documentary evidence was submitted with the exception of a copy of the Notice and some pictures for proof of service, I find it more likely than not that there was no other documentary evidence submitted on this file.

J.W. then advised that they served their evidence for this second Application to the Tenant by hand in the first week of April 2023; however, their additional documentary evidence was not served to the Tenant. The Tenant confirmed that he received this initial evidence in or around April 2023. Based on this testimony, I have accepted the Landlords' documentary evidence served in April 2023 and will consider it when rendering this Decision. However, as the Landlords' additional evidence was not served, I have excluded it and will not consider it when rendering this Decision.

The parties were informed, as per Rule 2.3 of the Rules of Procedure, that claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing would primarily address the Landlords' notices to end tenancy, and the other claims would be dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the notices cancelled?
- If the Tenants are unsuccessful in cancelling the notices, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2022, that the rent was established at \$1,850.00 per month, and that it was due on the first day of each month. A security deposit of \$925.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that the One Month Notice to End Tenancy for Cause was served to the Tenants by hand on January 15, 2023, and the reason the Landlords served the notice was because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.” The effective end date of the tenancy was noted as February 28, 2023, on the notice.

They then confirmed that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on March 2, 2023, by email, by being attached to the door, and by being mailed. J.W. advised that the Tenants were unable to pay the rent for March 2023. As such, the Notice was served. He testified that the Tenants refused to pay even half the rent as ordered to do so by the police. He submitted that the Tenants would always pay rent by direct deposit, that the last rent payment received from them was on February 1, 2023, and that the Tenants did not have any authority under the *Act* to withhold the rent. In addition to the Order of Possession, the Landlords are also seeking a Monetary Order for compensation in the amount of **\$5,550.00** for March, April, and May 2023 rental arrears.

The Tenant advised that J.W. is “violent and angry” and that he “chased” the co-tenant away. He confirmed that they did not pay any rent for March, April, or May 2023, and that they did not have any authority under the *Act* to withhold any rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, 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 have reviewed the Landlords’ One Month Notice to End Tenancy for Cause and 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the notices meet all of the requirements of Section 52.

While there are two notices to end tenancy to possibly consider, I find that it is not necessary to address the One Month Notice to End Tenancy for Cause. The only notice that is required to be addressed in this Decision will be the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants acknowledged on the Application that this Notice was received on March 2, 2023. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was received on March 2, 2023, the Tenants must have paid the rent in full or disputed the Notice by March 7, 2023, at the latest. While the Tenants did not pay any rent to cancel the Notice, the Notice was disputed on March 7, 2023. However, as there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

It should be noted that during the hearing, the Tenant continued to claim that the process was unfair as he was not permitted an adjournment to obtain legal counsel, and that he could not make sufficient submissions himself. However, the Tenant was given multiple opportunities to advance any relevant submissions regarding why rent was unpaid. Regardless, given that rent was intentionally withheld without any authority under the *Act* to do so, even if the Tenants had legal representation, this would not have changed the outcome of this tenancy in any regard.

Based on the consistent and undisputed evidence before me, as the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent

pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenants.

Furthermore, I am satisfied from the undisputed testimony that the Landlords should be entitled to a monetary award for the rental arrears from March 2023 to May 2023, in accordance with Section 55(4) of the *Act*.

As the tenancy ended by way of the Notice, I am satisfied that the Tenants were not successful in either Application. Moreover, it was not necessary for the Tenants to file two separate Applications as the original one could have been amended to dispute the Notice. Regardless, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for either Application.

Pursuant to Sections 55(4) and 67 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Rental arrears for March 2023	\$1,850.00
Rental arrears for April 2023	\$1,850.00
Rental arrears for May 2023	\$1,850.00
Total Monetary Award	\$5,550.00

Conclusion

The Tenants' Applications for Dispute Resolution are dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$5,550.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 24, 2023

Residential Tenancy Branch