



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me to cancel a 10-day Notice to End Tenancy for Unpaid Rent [the 'Notice'].

The landlords appeared at the hearing on 12 May 2023. The tenants also appeared.

Issue to be Decided

Should I cancel the Notice?

Background and Evidence

The parties agreed that the tenants rent a residence from the landlords for \$1,800.00 rent *per* month. The parties also agreed on the following about recent rent payments by the tenants:

1. they paid only \$300.00 for February rent; and
2. they paid nothing for April and May.

The landlords told me that the tenants also paid nothing for March rent. But the tenants told me they thought they attempted to pay \$300.00 for March rent.

As a result of receiving no rent for March, the landlords issued the Notice to the tenants. In drawing the Notice on or about 28 March, the landlords told me that they:

1. used the form approved by the RTB;

2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 7 April 2023; and
5. stated the basis for the Notice as the Applicant's failure to pay rent.

When I asked the tenants why they failed to pay rent for the months of February to May, they told me the following:

1. they were physically unable to pay rent, as they have been bed-ridden with some kind of disease, for which they have 'certifications';
2. a symptom of this disease is that their right ear has been plugged for six months;
3. this disease was the result of the landlords' criminal negligence in keeping the unit in an unhealthy state; and
4. when the tenants attempted to sell their car in order to pay rent, they discovered that they could not, as the landlords had defamed them.

The tenants also argued that I did not have jurisdiction to hear this application. They said that the issue of unpaid rent should be determined by, 'the supreme court'.

When I asked the tenants if any section of the *Residential Tenancy Act* [the 'Act'] empowered them to not pay rent, they told me that the rental unit 'impeded' their health such that the Act did not require them to pay rent.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

Firstly, I do not find the tenants' argument that the matter of the unpaid rent must be heard by 'the supreme court' persuasive. The tenants did not specify which 'supreme court', nor did they articulate any reason why I would not have jurisdiction to determine an issue of unpaid rent on a residential tenancy.

Secondly, I find it probable that the tenants paid nothing for March rent. They conceded that they paid nothing for April and May, and cited their health as the basis for refusing to pay rent. They also told me that they had suffered from this health condition for at least six months now. This notion of not paying rent because of their health is consistent with the landlords' evidence that the tenants did not pay rent for March. Furthermore,

the tenants' testimony was that they thought they attempted to pay some rent for March. This phrasing does not have the ring of reliable evidence.

The landlords' evidence of the Notice satisfies me that it is an effective notice, *per* section 52 of the Act.

Section 26 (1) of the Act places a positive obligation upon the tenants to pay rent, with which the tenants have not complied. The tenants could not direct me to any section of the Act that empowers them to withhold rent for poor health. The nearest they might have come to such a section might have been section 33, which can empower a tenant to withhold rent after having to make emergency repairs to address a health issue. But the tenants offered no evidence of any such repairs.

The tenants conceded in their evidence that they failed in their obligation to pay rent, and they have continued to fail in this obligation. I dismiss their application without leave to re-apply and, as a result, find that the tenancy is at an end pursuant to the Notice and effective 7 April 2023.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective 7 April 2023. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay to the landlords \$6,900.00 for unpaid rent [\$1,800.00 *per* month for four months, less \$300.00 paid in February] *per* section 55 (1.1) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims

Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 17 May 2023

Residential Tenancy Branch