



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT / OPR, MNRL, MNDL-S, MNDCL, FFL

Introduction

The hearing was convened following applications for dispute resolution (“Applications”) from both parties, which were crossed to be heard simultaneously.

The Tenants seek the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Residential Tenancy Act (the “Act”); and
- to recover the cost of the filing fee under section 72 of the Act.

The Landlord requests the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- a Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act;
- a Monetary Order for damage caused by the Tenants during the tenancy under section 67 of the Act;
- a Monetary Order for monetary loss or other money owed under sections 38 and 67 of the Act; and
- authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

The Landlord and Tenant M.R. attended the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

M.R. testified that they served the Landlord the Notice of Dispute Resolution Package (“Materials”) via registered mail on April 14, 2023 and they noted that the item had not been collected according to the tracking facility on the Canada Post website. The tracking number and postage record were submitted into evidence by the Tenants. The Landlord testified that they did not receive the Tenants’ Materials. Based on the evidence and testimony from both parties, I find that pursuant to section 89 of the Act, the Tenants’ Materials were sufficiently served to the Landlord. The Canada Post tracking number is provided on the first page of this Decision.

The Landlord testified that they served their Materials to the Tenants in-person some time between April 21, 2023 and April 23, 2023. R.Z. confirmed that the Landlord’s Materials were received and they had sufficient time to review them. Given this, I find the Landlord’s Materials were sufficiently served in accordance with section 71(2)(c) of the Act.

Preliminary Issue: Severing

The Landlord applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 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 reviewing the issues raised by the Landlord, I determined that the primary issue is the Landlord’s request for an Order of Possession and Monetary Order for unpaid rent after issuing the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?
- 4) Is either party entitled to the return of the filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on March 28, 2022.
- Rent is \$6,500.00 per month due on the first day of the month.
- A security deposit of \$3,250.00 and a pet damage deposit of \$3,250.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.

M.R. testified they vacated the rental unit on May 11, 2023, the day before the hearing, though the Landlord could not confirm if they agree with this as they had not visited the rental unit since.

The Landlord testified as follows. They issued the Notice as the Tenants were not paying rent. Before issuing the Notice there had been a lot of discussions between the parties about the Tenants being unable to afford rent. Rent payments had been at times made partially, or not at all. The Landlord seeks an Order of Possession and Monetary Order for unpaid rent.

A copy of the Notice was entered into evidence. It is signed March 28, 2023 and provides outstanding rent of \$18,500.00 as of March 31, 2023. The effective date is April 7, 2023. The Landlord clarified that they entered March 31, 2023 as the due date as this was when they wanted payment by. They confirmed that the figure for amount of outstanding rent represented the arrears as of March 1, 2023. No payments were made by the Tenants since the Notice was issued. The amount sought by the Landlord in respect of unpaid rent, as of May 1, 2023, is \$25,750.00.

M.R. Testified as follows. They had experience difficult times recently and had issues with their business. They acknowledged receipt of the Notice and agreed that the amount of outstanding rent on the Notice of \$18,500.00 as of March 1, 2023 was correct. They agreed that no rent payments had been made to the Landlord since the Notice was issued but did not know how the total arrears of \$25,750.00 was calculated.

They also stated there was a verbal agreement for \$750.00 to be reimbursed to them by the Landlord each quarter to cover utilities.

The Landlord confirmed that there had been a verbal agreement between the Tenants and her ex-partner to reimburse as the M.R. has stated, but as rent was not paid, they did not provide the reimbursement for utilities.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenant M.R. put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore, I am satisfied that rent in the amount of \$6,500.00 was due on March 1, 2023.

The Tenant M.R. provided evidence and testimony regarding recent events in their personal life which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenants and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023, and that there were rental arrears prior to this date. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the

form and content requirements of section 52 of the Act. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read April 10, 2023 instead of April 7, 2023. I also exercise my authority under section 68(1) of the Act to amend the due date of the rent on the Notice to March 1, 2023 as both parties agreed they understood this to be the correct date the outstanding rent was due.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act.

The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on April 10, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$25,750.00 in unpaid rent to the Landlord.

Though the Tenant M.R. did not agree with the amount put forward by the Landlord, as the parties agreed that \$18,500.00 was owed as of March 1, 2023 and that monthly rent of \$6,500.00 was not paid on April 1, 2023 or May 1, 2023, I use my authority under section 67 of the Act to determine the amount of compensation the Tenants must pay the Landlord in respect of unpaid rent to be \$25,750.00.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit and pet damage deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision.

As the Landlord has been successful in their Application, I order the Tenants to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

As the Tenants' Application was not successful they must bear the cost of the filing fee.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlord's Application is granted.

The Landlord is issued an **Order of Possession**. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a **Monetary Order**. A copy of the Monetary Order is attached to this Decision. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$25,750.00
Filing fee	\$100.00
Less: security deposit and pet damage deposit	(\$6,500.00)
Total	\$19,350.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 12, 2023

Residential Tenancy Branch