



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CLIFFORD ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC OPB MNRL-S FFL

Introduction

This dispute relates to the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated January 17, 2023 (1 Month Notice),
2. Order of possession for breach of the Act,
3. \$5,375 for unpaid rent (see amendment below),
4. Retain \$537.50 security deposit towards rent owed,
5. \$100 filing fee.

The agent appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated February 8, 2023 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on the tenants, each by their own registered mail package and both served on February 9, 2023. The Canada Post registered mail tracking numbers were 1. RN 646 735 985 CA and 2. RN 646 735 971 CA. The address used for mailing was the rental unit and the agent stated that as of the date of the hearing, June 1, 2023, the tenants continue to occupy the rental unit.

According to the Canada Post website, both packages were marked "returned to sender, unclaimed". Pursuant to section 90 of the Act, both Hearing Packages are

deemed served 5 days after they are mailed. I find both parties to be deemed served as of February 14, 2023.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenants and the hearing continued without the tenants present.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed listed in the application, the tenants have subsequently not paid the rent for February, March, April, May and June of 2023. As a result, the landlord requested to amend the application to include rent owed for September 2022 through to and including June 2023. The landlord also stated that the tenants continue to occupy the rental unit. I find this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to \$10,750, which consists of \$1,075 rent for the September 2022 to June 2023 rent, inclusive, before the filing fee.

The agent confirmed their email address during the hearing. They also confirmed that they are not aware of the tenants' email address. The agent was advised that the decision and any related orders will be emailed to the landlord. The decision will be sent by regular mail to the tenants.

Issues to be Decided

- Is the landlord entitled to an order of possession?
- Is the landlord entitled to a monetary order?
- What should happen to the tenants' security deposit?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on August 7, 2021. Monthly rent is \$1,075 and due on the first day of each month. The tenants paid a security deposit of \$537.50, which I will address later in this decision and will include the interest calculation.

The agent confirmed service of the 1 Month Notice by posting to the tenants' door on January 17, 2023. The tenants are deemed served 3 days later, which I will address later in this decision.

The 1 Month Notice is dated January 17, 2023, and has an effective vacancy date of February 17, 2023, which automatically corrects under the Act, which I will address later in this decision.

The agent stated that the landlord has not been served with any application from the tenants disputing the 1 Month Notice and that the tenants continue to occupy the rental unit. On the 1 Month Notice, the landlord alleges the following causes:

- ☒ Tenant is repeatedly late paying rent
- ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☐ put the landlord's property at significant risk
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - ☐ damage the landlord's property
 - ☒ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - ☐ jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☐ Tenant has not done required repairs of damage to the unit/site/property/park
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of the Causes state the following:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

- ① - Not paying for the months of... Sept, Oct, Nov, Dec., and Jan. 2022-2023 (Monthly Rent \$1075)
- ② - Drinking and smoking in smoke free building
- ③ - Constantly quarrel in the suite
- ④ - leaving items on the hallway exit-emergency door

The landlord confirmed that the tenants have not paid rent for September 2022, October 2022, November 2022, December 2022, January 2023, February 2023, March 2023, April 2023, May 2023 and June 2023.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the Act states that if the tenants once served with the 1 Month Notice do not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenants are conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenants did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the corrected effective vacancy date, which corrects automatically under section 53 of the Act to February 28, 2023.

As the tenants continue to occupy the rental unit, I find the tenants are overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days after service on the tenants**.

In addition, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also accept the agent's undisputed testimony that the tenants have not paid rent for September 2022 to June 2023, inclusive, which I find far exceeds the requirement of 3 late payments of rent listed under RTB Policy Guideline 38.

I find the tenants breached section 26 of the Act, which requires that rent be paid on the first day of each month. Therefore, I find the tenants owe the landlord **\$10,750** as claimed for unpaid rent.

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100** for the recovery of the cost of the filing fee under the Act. I find the total owing to the landlord by the tenants is **\$10,850**.

Given the above, I authorize the landlord pursuant to section 38 of the Act to retain the tenants' entire security deposit of \$537.50, which has accrued \$4.37 in interest for a total security deposit/interest of \$541.87 to offset that portion of the landlord's claim.

I grant the landlord a monetary order under section 67 of the Act in the balance owing by the tenants to the landlord of **\$10,308.13**.

Conclusion

The landlord's application is fully successful.

The tenancy ended on February 28, 2023. The tenants have been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. I caution the tenants that they can be held liable for call enforcement costs including court costs and bailiff fees.

The landlord may keep the security deposit/interest in addition to the monetary order of \$10,308.13. The landlord must serve the tenants with the monetary order along with a demand letter, before enforcing the monetary order in the Provincial Court of British Columbia, Small Claims Division.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 1, 2023

Residential Tenancy Branch