



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: OPR-DR, MNR-DR, FFL (x 2)
Tenants: CNR, RR, RP, FFT

Introduction

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

The Tenants made one Application and seek the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent dated April 7, 2023 (the April Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act);
- an order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65;
- an order for the Landlord to make repairs to the rental unit under section 32; and
- to recover the cost of the filing fee under section 72 of the Act

In their first Application, the Landlord requests the following:

- an Order of Possession after issuing a 10 Day Notice to End Tenancy for Unpaid Rent dated January 9, 2023 (the January 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; and
- authorization to recover the filing fee for both of their Applications from the Tenant under section 72 of the Act

In their second Application, the Landlord requests the following:

- an Order of Possession after issuing the April 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; and
- authorization to recover the filing fee for both of their Applications from the Tenant under section 72 of the Act

The Tenants and the Landlord's Agent attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Landlord's Agent testified the Notice of Dispute Resolution Package (Materials) for the Landlord's first Application relating to the January Notice was served on the Tenants on April 21, 2023 via registered mail. The Tenants confirmed receipt of the Landlord's Materials, therefore I find that pursuant to section 89 of the Act, the Landlord's Materials were sufficiently served to the Tenants.

The Landlord's Agent stated the Materials for the second Application relating to the April Notice were served on the Tenants and they believed this was done via registered mail, though they could not provide a date when this was done, or a Canada Post tracking number. The Tenants testified they did not receive the Landlord's Materials. Given this, I find on the balance of probabilities that the Landlord's Materials relating to the April Notice were not served in accordance with the Act and therefore dismiss the Landlord's second Application with leave to reapply.

The Tenants testified they served the Materials for their Application on the Landlord on April 21, 2023 via registered mail. The Landlord's Agent confirmed receipt of the Materials. I find that pursuant to sections 89 and 90 of the Act that Tenants' Materials were sufficiently served to the Landlord.

Preliminary Matter: Matters Already Decided

The Tenants requested to reduce rent for repairs, services or facilities agreed upon but not provided, and for the Landlord to make repairs to the rental unit. Both of these issues were included in a previous application made by the Tenants on December 6,

2022. The matter was heard on April 14, 2023 and a decision dated May 19, 2023 was provided to both parties.

The request for repairs was dismissed without leave to reapply. The request to reduce rent was granted and the Tenants were authorized to reduce rent by \$200.00 per month starting June 1, 2023 and to make a one-time decision from rent due June 1, 2023 of \$2,100.00. Given these issues have already been decided, I decline to hear them again.

The file number for the Tenants' previous application is included on the front page of this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the January Notice?
2. If not, are the Tenants entitled to an order canceling the April Notice?
3. If not, is the Landlord entitled to an Order of Possession based on the April Notice?
4. Is the Landlord entitled to a Monetary Order for unpaid rent?
5. Are either party entitled to the recovery of the costs of the filing fee?

Background and Evidence

The attending 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 August 1, 2022.
- Rent is \$4,600.00 per month due on the first day of the month.
- A security deposit of \$2,300.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Landlord's Agent testified as follows. The Tenants did not pay rent in January 2023 so the January Notice was issued to the Tenants. The Tenants continued to withhold

rent and after speaking with the Residential Tenancy Branch, a second notice to end tenancy, the April Notice, was issued.

The Tenants have not paid any rent since the January Notice was issued. The Landlord seeks an Order of Possession and a Monetary Order of \$26,400.00 for unpaid rent.

The Tenants testified as follows. They stopped paying rent in January 2023 as they were waiting for the decision from their application requesting authorization to reduce rent. They do not want to pay rent as the electric vehicle charger the Landlord said they would supply has still not been provided to them. They feel the tenancy agreement was deceitful. They do not agree with the decision dated May 19, 2023.

The Tenants acknowledged receiving both the January Notice and the April Notice and agreed that rent had not been paid from January 1, 2023 onwards.

A copy of the January Notice was entered into evidence. It is signed January 9, 2023 and provides an effective date of January 20, 2023. It indicates rent of \$4,600.00 due on January 1, 2023 was not paid. The service details indicate the January Notice was served both in person and by leaving a copy in the mailbox or the rental unit.

A copy of the April Notice was entered into evidence. It is signed April 7, 2023 and provides an effective date of April 18, 2023. The amount of outstanding rent listed is \$18,400.00, due on April 1, 2023. The service details indicate the April Notice was served by registered mail.

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*;

- when a tenant has received a Two Month Notice to End Tenancy for Landlord's Use and they withhold the last month's rent under section 51.4(2) of the Act;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenants put forward testimony that indicates that they were entitled to withhold rent following the decision dated May 19, 2023. However, they were only authorized to reduce rent by \$200.00 per month from June 1, 2023 and to make a one-time deduction of \$2,100.00 from the rent due on June 1, 2023. No evidence or testimony presented to me indicates any other circumstances are applicable in this case. Therefore, I am satisfied that rent of \$4,600.00 was due on January 1, 2023.

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 Tenants' own testimony show that the Tenants did not pay the rent on January 1, 2023. Therefore, I find on a balance of probabilities that the January Notice was given for a valid reason, namely, the non-payment of rent. I also find that the January Notice complies with the form and content requirements of section 52 of the Act.

The Tenants' testimony indicates that the outstanding rent was not paid in full within five days of the Tenants receiving the January Notice. Had this been done it would have meant the January Notice has no effect in accordance with section 46(4)(a) of the Act. Additionally, there is no record of the Tenants disputing the Notice. Therefore, under section 46(5) of the Act, the Tenants are presumed to have accepted the January Notice.

Based on the above findings, I grant the Landlord's first Application. The Landlord is issued an Order of Possession under section 55(1) of the Act. The Tenants have two days to vacate the rental unit from the date of service or deemed service of the Order of Possession. I find that the Tenancy ended on January 20, 2023 in accordance with the January Notice.

Given that the tenancy is ended, the issue of the April Notice is now moot. Therefore, I dismiss the Tenants Application without leave to reapply.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act.

Therefore, the Tenants are ordered to pay \$25,300.00 in unpaid rent to the Landlord.

I calculated this amount based on rent from January 1, 2023 to May 1, 2023 at \$4,600.00 per month going unpaid ($\$4,600.00 \times 5 = \$23,000.00$) plus rent due June 1, 2023 at \$4,400.00 as the electric vehicle charger had not been installed so rent was reduced by \$200.00, minus the amount the Tenants were authorized to withhold per the decision dated May 19, 2023 ($\$4,400.00 - \$2,100.00 = \$2,300.00$).

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

As the Landlord's first Application was successful, 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 Landlord did not serve the Materials for their second Application, which was also not necessary given that an Order of Possession and a Monetary Order had already been requested in their first Application, the Landlord must bear the cost of the filing fee for the second Application.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Landlord's Application is granted.

The Tenants' Application is dismissed without leave to reapply.

The Landlord is granted 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 granted 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 due January 1, 2023 – May 1, 2023 (\$4,600.00 x 5)	\$23,000.00
Unpaid rent due June 1, 2023 (\$4,400.00 - \$2,100.00)	\$2,300.00
Filing fee	\$100.00
Less: security deposit	(\$2,300.00)
Total	\$23,100.00

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: June 02, 2023

Residential Tenancy Branch