



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

The hearing took place following applications for dispute resolution (Applications) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- An order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act);
- For the Landlords to comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlords request 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;
- Compensation for damage caused by the Tenant to the rental unit under section 67 of the Act;
- Compensation for monetary loss or other money owed under section 67 of the Act; and
- Authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant is a company, EPM. Both directors (Directors) of EPM attended the hearing. The Directors confirmed they are the 50/50 owners of EPM. The Landlords also

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 Directors testified they served the Landlords with the Notice of Dispute Resolution Package (Materials) for their Application via registered mail but they were unsure when this was done. The Landlords confirmed receipt of the Tenant's Materials and raised no issues with service and confirmed they had sufficient time to review and respond to the Materials.

The Landlords testified they served the Materials for their Application onto the Tenant via registered mail on March 23, 2023 and via email on March 25, 2023. The Directors stated they did not get the Materials via registered mail as they had vacated the rental unit by then. They confirmed receipt of the Materials via email and stated they had sufficient time to review and respond to them, though they pointed out the Landlords did not apply for substituted service and they did not have an agreement in place to serve documents via email.

Based on the above, I am satisfied both parties were notified of the hearing and of the claims of the other party and had a sufficient and fair opportunity to prepare for the hearing. Given this, I find the Materials for both parties were sufficiently served in accordance with section 71(2)(c) of the Act.

Preliminary Issue: Severing

The Landlords 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 Landlords, I determined that the primary issues are the Tenant's request to cancel the Notice, the Landlords' request for an Order of Possession and Monetary Order based on the Notice and the Tenant's request for the Landlords to comply with the Act, Regulation or tenancy agreement. I exercised my discretion to dismiss with leave to re-apply, the Landlords' monetary claims.

Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords entitled to a Monetary Order for unpaid rent?
- 4) Is the Tenant entitled to an order for the Landlords to comply with the Act, Regulation or tenancy agreement?

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 November 20, 2022.
- Rent is \$3,650.00 per month due on the twentieth day of the month.
- A security deposit of \$1,825.00 was paid by the Tenant which the Landlords still hold.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant no longer occupies the rental unit.

The Landlords testified as follows. They emailed the Directors on February 11, 2023 as they received a notification of a bylaw infraction from the Property Manager of the building the rental unit is situated in. The bylaw infraction was connected to an unregistered AirBnb being operated at the rental unit. They asked the Directors to resolve the situation in the email.

Rent due on February 20, 2023 was not paid so the Landlords issued the Notice on February 22, 2023 via email. They received no payments from the Tenant since the Notice was issued. The Landlords' Application was submitted to the Residential Tenancy Branch on March 4, 2023. On March 23, 2023 they received an email from the Directors stating they had vacated the rental unit on March 20, 2023.

A copy of the Notice was entered into evidence by both parties. It is dated February 22, 2023 and provides an effective date of March 4, 2023. The reason for the Notice is

outstanding rent of \$3,650.00 as of February 20, 2023. The Notice lists the two Directors of EPM individually as tenants.

The Landlords do not seek an Order of Possession as the Tenant no longer occupies the rental unit, though they seek unpaid rent of \$7,300.00 for the payments due on February 20 and March 20, 2023.

The Directors testified as follows. They received the email from the Landlords terminating the tenancy on February 11, 2023. The bylaw violation referenced in the email is presently pending and has not been confirmed. They were aware that the Landlords can not evict them in this manner, and it was not a valid Notice to End Tenancy. They stated the Landlords should have to provide two months' notice and give 1 month's rent compensation to them.

They stated they did not pay rent on February 20, 2023 as they were entitled to 1 month's free rent. They acknowledged receipt of the Notice and confirmed no other Notices to End Tenancy were received from the Landlords. The Directors pointed out that both the Notice and the Landlords' Application lists them individually as tenants, rather than the company name, per the tenancy agreement.

The Directors argued that the Landlords knew the rental unit would be used as an AirBnb. I was referred to paragraph 3 in the addendum to the tenancy agreement which confirmed the Landlords are aware the rental unit will be rented to third parties for profit and the Tenant is responsible for the management of the rental.

The Tenant wants the Landlords to comply with the Act by giving the Tenant a valid Two Month Notice to End Tenancy to terminate the tenancy and provide 1 month free rent to them.

The Directors had occupied the rental unit themselves at times and vacated the rental unit on March 20, 2023. They informed the Landlords they had left the rental unit via email on March 23, 2023.

In response to the Directors' testimony, the Landlords' testified as follows. The email of February 11, 2023 was not intended to end the tenancy, just to try and solve the problem of the bylaw violation. If the Tenant had corrected the issue with the municipality and strata, the tenancy could have continued. I was referred to the language in the email which stated the tenancy would be terminated *unless* the bylaw

violation was corrected and that the Tenant was given an opportunity to correct the issue.

The Landlords stated they understood the property could be occupied by either the Directors, or be rented to clients via short-term rentals such as AirBnb, though pointed out it was the responsibility of the Directors to get the relevant permits in place to rent to third parties. At the start of the tenancy, they had given the Tenant extra time to get the permits from the municipality and strata ready.

They listed the Directors as individual tenants as they could not find any records for the company EPM.

Analysis

Tenant's request for the Landlords to comply with the Act

Section 62(3) of the Act states that and Arbitrator may make an order to give effect to the rights, obligations and prohibitions under the Act including an order that a landlord or tenant comply with this Act, the Regulation or a tenancy agreement and an order that the Act applies. The Tenant requests an order for the Landlords to issue a Two Month Notice to End Tenancy for Landlord's Use to terminate the tenancy and to provide one month's rent compensation that would be due under that Notice to End Tenancy.

I find that I have no authority to compel the Landlords issue a Notice to End Tenancy if that is not their wish. Furthermore, I find that the tenancy agreement contains a valid "vacate clause" to end the tenancy at the end of the term on May 19, 2023 so this would not have been necessary in any case.

I find the Tenant appears to have been operating under an incorrect assumption that whenever a landlord ends a tenancy, regardless of the type of Notice to End Tenancy issued to a tenant, the landlord is obligated to compensate the tenant. This is not accurate, as a landlord only has to provide compensation equivalent to one month's rent when either a Two or Four Month Notice to End Tenancy is issued under section 49 of the Act, which has not happened in this case.

Based on the Directors' testimony, they appeared to me to be aware that the Landlords were not able to end the tenancy with the email of February 11, 2023 regarding the bylaw infraction as they stated they knew the email was not a "valid" way of terminating

the tenancy. As such, they were under no obligation to vacate the rental unit, though appeared to do so of their own accord and failed to provide notice to the Landlords of this.

Given the above findings, I decline to issue the requested order and the Tenant's request is dismissed without leave to reapply.

10 Day Notice to End Tenancy

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 an Arbitrator.

The Directors testified that rent was not paid on February 20, 2023 as they thought they were entitled to withhold payment. As stated earlier in this Decision, I find they were operating under a false assumption that they were entitled to 1 month's rent compensation when they received the email from the Landlords on February 11, 2023. I find this is not a valid reason for the Tenant to have withheld rent as, per the Directors own testimony, a Two Month Notice to End Tenancy was not issued by the Landlords. No other evidence put forward by the Tenant indicates that any of the above circumstances where rent can be withheld are applicable, nor are any apparent to me. Therefore, I am satisfied that rent was due in full on February 20, 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 Landlords' evidence and the Directors' own testimony show that the Tenant did not pay the rent on February 20, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

The Notice lists the Directors as tenants. Per the tenancy agreement, the company EPM is the Tenant. Section 68(1) of the Act allows an Arbitrator to amend a Notice to End Tenancy the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice.

Given that the Directors confirmed they are the 50/50 owners of the Tenant company with no other party having an interest in proceedings I do not find any significant prejudice to the Directors or the Tenant in changing the name of the tenant listed on the Notice to the Tenant company. I do not find the Tenant or the Directors' ability to respond to the Landlords' Notice or Application was hindered by the fact the Directors were named individually as tenants. I attribute the naming of the Directors as individual tenants on the Notice to the Landlords being unable to find a record of the Tenant company EPM named on the tenancy agreement. Therefore, I amend the Notice accordingly.

Section 64(3)(c) of the Act also allows an Arbitrator to amend an application for dispute resolution. For the same reasons as set out above, I amend the Landlords' Application to list the Tenant as the respondent instead of the Directors individually.

With the amendment to the Notice, I find that it 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 and the Landlords' Application is granted.

The Notice was served on February 22, 2023 via email, therefore would have been deemed received on February 25, 2023, the third day after it is sent in accordance with section 44 of the Regulation. 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 March 7, 2023 instead of March 4, 2023.

Based on the above findings, the Landlords are entitled to an Order of Possession under section 55(1) of the Act. However, as the Landlords confirmed the Tenant has vacated the rental unit and they no longer require an Order of Possession, one shall not be issued.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. I find the Tenant made no payments for rent to the Landlords after the Notice was issued and, per their own testimony, occupied the rental unit until March 20, 2023 and only informed the Landlords they had vacated the rental unit on March 23, 2023. Under section 44(1)(f) of the Act, I find the tenancy ended on March 23, 2023. Therefore, I find the Landlords are entitled to recover from the Tenant the unpaid rent due March 20, 2023 of \$3,650.00 and a pro-rated amount of \$470.96 for March 20 to March 23, 2023 inclusive $((\$3,650.00/31) \times 4)$ for a total of \$4,120.96.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain the Tenant's security deposit of \$1,825.00 as partial satisfaction of the payment order.

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

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

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlords' Application is granted.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlords' obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$4,120.96
Filing fee	\$100.00
Less: security deposit	(\$1,825.00)
Total	\$2,395.96

The Landlords are authorized to retain the Tenant's security deposit.

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 21, 2023

Residential Tenancy Branch