



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, FFL; CNC, PSF, OLC, FFT

Introduction

This hearing dealt with the landlords' application, filed on May 20, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities of \$1,080.00, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on March 8, 2023, pursuant to the *Act* for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated March 5, 2023, and effective April 30, 2023 ("first 1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two landlords and "tenant AK" did not attend this hearing. The landlords' agent and tenant GS ("tenant") attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 60 minutes from 11:00 a.m. to 12:00 p.m.

Both parties provided their names and spelling. Both parties provided their email addresses for me to send this decision to both parties after this hearing.

The landlords' agent confirmed that the landlords own the rental unit. She confirmed that she had permission to represent the two landlords named in this application. She provided the rental unit address.

The tenant confirmed that he had permission to represent tenant AK (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, both parties separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Both parties confirmed that they wanted to proceed with this hearing, they did not want to settle their applications, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

I repeatedly cautioned the tenant that if I dismissed the tenants' application without leave to reapply, I could uphold any of the landlords' notices to end tenancy, end this tenancy, and issue a two (2) day order of possession against the tenants. He repeatedly affirmed that the tenants were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlords' agent that if I dismissed the landlords' application without leave to reapply, I could cancel any of the landlords' notices to end tenancy, and grant the tenants' application. I repeatedly warned her that as per the above, I would not issue an order of possession to the landlords, and this tenancy would continue. She repeatedly affirmed that the landlords were prepared for the above consequences if that was my decision.

During this hearing, I repeatedly warned the tenant about arguing with me, interrupting me, and speaking at the same time as me. He continued with this behavior throughout

this hearing. However, I allowed him to attend this full hearing in order to present the tenants' application and respond to the landlords' application.

Preliminary Issue – Service of Documents

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 21, 2023 and March 23, 2023, and effective April 3, 2023 ("10 Day Notice"). In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 10 Day Notice.

The tenant confirmed receipt of the landlords' One Month Notice to End Tenancy for Cause, dated March 21, 2023, and effective April 30, 2023 ("second 1 Month Notice"). In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' second 1 Month Notice.

Preliminary Issue – Dismissal of Claims

During this hearing, the landlords' agent confirmed that the landlords' first 1 Month Notice was invalid, there was no reason given to end the tenancy, and the notice was cancelled. Accordingly, the landlords' first 1 Month Notice, dated March 5, 2023, and effective April 30, 2023, is cancelled and of no force or effect.

During this hearing, the landlords' agent confirmed that the landlords did not want to pursue their claim for a monetary order for unpaid rent and utilities of \$1,080.00 against the tenants. I informed her that this claim was dismissed without leave to reapply and the landlords could not pursue this claim in the future, even if this tenancy continues. She affirmed her understanding of and agreement to same.

During this hearing, the tenant affirmed that the tenants no longer required their application for an order requiring the landlords to provide services or facilities required by law and an order requiring the landlords to comply with the *Act*, *Regulation*, or tenancy agreement. He stated that the tenants received their internet and laundry services from the landlords. I informed him this claim was dismissed without leave to reapply, even if this tenancy continues. He affirmed his understanding of and agreement to same.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Should the landlords' second 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

Is either party entitled to recover the filing fee paid for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2020. A written tenancy agreement was signed by the tenants and the former landlord. The current landlords purchased the rental unit in November 2022 and continued the tenants' tenancy. The tenants continue to occupy the rental unit.

The tenant testified that monthly rent of \$1,300.00 is payable by the first day of each month to the landlords, as per the original written tenancy agreement. The landlords' agent testified that \$1,600.00 was due by the first day of each month, which includes \$1,300.00 for rent, as per the tenancy agreement, and \$300.00 for laundry and internet services, which were added by the landlords and are not included in the monthly rent of the tenancy agreement.

The tenant stated that a security deposit of \$650.00 was paid by the tenants to the landlords. The landlords' agent testified that the security deposit received by the landlords from the tenants, was \$600.00.

Both parties agreed that the landlords issued the 10 Day Notice, indicating that \$300.00 was due for unpaid rent on March 1, 2023, as per page 2 of the notice.

Both parties agreed that the landlords issued the second 1 Month Notice, for the following reason indicated on page 2 of the notice:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlords' agent testified regarding the following facts. The landlords issued a notice of rent increase for \$300.00 on an MHPTA form for a manufactured home park. This was done in error, as the wrong form was used. Laundry and internet are not included in the tenancy agreement, and they are additional services. Both parties agreed that the tenants would pay \$300.00 extra per month, to the landlords, for these services. The tenants paid for these services from November 2022 to January 2023 and then stopped paying it.

The tenant testified regarding the following facts. They pay rent in cash to the landlords. The landlords tried to increase the tenants' rent from \$1,300.00 to \$1,400.00 and did not provide written notice to the tenants. In November 2022, the landlords wanted \$1,900.00 in rent from the tenants. The tenants asked for a notice of rent increase from the landlords. The landlords provided a notice to vacate because the tenants would not agree to pay \$1,900.00 from their original rent of \$1,300.00. A notice of rent increase was given to the tenants in March on an MHPTA form, which the tenants dispute as an illegal rent increase. The tenants asked for old rent receipts from 2021 to now, and the landlords did not respond. The landlords stopped the tenants' laundry services. The tenants were "pressurized" to leave and the landlords hired the landlords' agent to help them leave. The laundry is included in rent on the tenancy agreement. The tenants were getting laundry services once per week, for no additional cost, from the former and current landlords. The tenants have never paid any other amount besides \$1,300.00 for rent to the landlords, as claimed by the landlords' agent.

The landlords' agent stated the following facts. The landlords issued the second 1 Month Notice to the tenants because there are serious issues and arguments. The upstairs tenants and the mother are arguing. Tenant KA, who is the tenant's wife, had an altercation in the laundry room regarding the laundry and rent.

The tenant stated the following facts. There were no altercations with the landlords. The landlords tried to increase the tenants' rent. The March notice of rent increase was for \$1,600.00. The landlords got the landlords' agent involved to ensure the landlords' side was taken care of. The letter says that the tenants would pay \$1,300.00 not \$1,500.00 or \$1,600.00 for increased rent. The landlords are trying to get the tenants to move out to increase the rent.

Analysis

Burden of Proof

The landlords have the burden of proof, on a balance of probabilities, to prove their application and the reasons for issuing the notices to end tenancy to the tenants. The *Act, Regulation*, RTB Rules, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of their application, in order to obtain an order of possession against the tenants.

The landlords were provided with a four-page document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, which includes the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.**
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP contains provisions that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document.

The landlords received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlords to be aware of the *Act, Regulation*, RTB Rules, and Residential Tenancy Policy Guidelines. It

is up to the landlords, as the applicants, to provide sufficient evidence of their claims and their notices to end tenancy, since they chose to file their application and issue the notices on their own accord.

Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlords' agent did not properly present the landlords' application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 60 minutes, so the landlords' agent had ample time and opportunity to present the landlords' application and evidence. During this hearing, I repeatedly asked the landlords' agent if she had any other information to present and provided her with multiple opportunities for same.

10 Day Notice

Section 46 of the *Act* states the following, in part:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

Section 46(1) of the *Act* permits the landlords to issue a 10 Day Notice only after rent is unpaid and section 52(d) of the *Act* requires the landlords to state on a notice to end tenancy, the reason for issuing the notice.

The landlords indicated 2 different dates for when the 10 Day Notice was signed. The landlords indicated March 21, 2023 and March 23, 2023. The landlords' agent confirmed that she signed and dated the notice, as an agent for the landlords, and that two different dates were mistakenly indicated and not corrected. She said the March 21, 2023, was the date the notice was signed, and the March 23, 2023, was the date it was served.

The landlords indicated on the 10 Day Notice, that \$300.00 was due on March 1, 2023, for rent. The landlords' agent agreed that the above amount represents the landlords' claims for laundry and internet costs, not for rent. She agreed that the tenants paid rent of \$1,300.00 for March 2023, to the landlords, as per the tenancy agreement.

As such, I find that the tenants did not have proper notice of the correct total amount of rent due on March 1, 2023. The landlords included amounts for laundry and internet in the rent section, when they are not rent costs. I find that the tenants did not have an opportunity to pay the rent in order to cancel the 10 Day Notice. I find that the 10 Day Notice does not comply with section 52 of the *Act*.

As such, I find that the tenants did not have sufficient time to pay the rent or file an application to dispute the 10 Day Notice at the RTB. The tenants did not apply to dispute the 10 Day Notice, as the tenant claimed that he believed the information on the notice was incorrect. I find that the notice is invalid, when it was issued by the landlords to the tenants.

Accordingly, I find that the landlords' 10 Day Notice, dated March 21 and 23, 2023, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession for unpaid rent and this claim is dismissed without leave to reapply. This tenancy will continue until it is ended in accordance with the *Act*.

Second 1 Month Notice

I find that the landlords provided insufficient evidence to show that the tenants significantly interfered with or unreasonably disturbed other occupants or the landlords.

I find that the landlords failed to provide sufficient evidence of a pattern of behaviour by the tenants demonstrating *significant* interference or *unreasonable* disturbance, as per the reason indicated on the second 1 Month Notice.

The landlords' agent did not sufficiently review any documents submitted by the landlords, for this hearing. She did not sufficiently explain or present the landlords' claims regarding the second 1 Month Notice. She indicated that there were arguments and altercations but did not provide sufficient details as to the dates, the incident details, any warning letters to the tenants, any supporting evidence or documents, or other such information. She did not present any witnesses at this hearing, despite indicating that other occupants were involved in the above altercations with the tenants.

The tenants did not apply to dispute the second 1 Month Notice, as the tenant claimed that he believed they did, by including a copy of the notice in their application, which already disputed the first 1 Month Notice. I find that the second 1 Month Notice is invalid and was not issued for sufficient reasons.

Accordingly, I find that the landlords' second 1 Month Notice, dated March 21, 2023, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

Filing Fees

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants. This claim is dismissed without leave to reapply.

As the tenants were only partially successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

Conclusion

The tenants' application to cancel the landlords' first 1 Month Notice, is granted.

The remainder of the tenants' application is dismissed without leave to reapply.

The landlords' two 1 Month Notices, dated March 5, 2023, and dated March 21, 2023, are cancelled and of no force or effect.

The landlords' 10 Day Notice, dated March 21 and 23, 2023, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession against the tenants. This tenancy continues until it is ended in accordance with the *Act*.

The landlords' entire application is dismissed without leave to reapply.

This decision 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 30, 2023

Residential Tenancy Branch