



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords.
2. Payment of \$6,600.00 of unpaid rent.
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 23 May 2023. The tenants did not.

Issues to be Decided

Is the tenancy at an end?

Should the tenants pay \$6,600.00 to the landlords for unpaid rent?

Should the tenants reimburse the landlords for the cost of filing this application?

Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1330 hours and ended about half an hour later. I confirmed:

1. that the landlords swore that they attached a copy of this Notice of Hearing to the door of the rental unit on 14 April;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and
3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing, but I conducted it in their absence. The landlords' evidence satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Background and Evidence

The landlords told me that the tenants began renting the unit from them back in October 2017. There was no written tenancy agreement, but the parties agreed upon \$1,200.00 *per* month in rent, due on the first day of each month.

In October and November 2017, the tenants paid full rent. But starting in December 2017, the tenants consistently paid \$100.00 less than full rent every month.

The landlords said that every time the tenants failed to pay full rent, they would speak to them, reminding them of how much rent is owed. The tenants, in response, would assure the landlords that they would pay the full rent.

Then, out of frustration, the landlords applied for dispute resolution with the RTB regarding this rent issue. They said they thought they did this about two years ago. But before the dispute was heard, the tenants again assured the landlords that they would pay full rent. And so the landlords did not pursue their application for dispute resolution.

Now, say the landlords, they are 'suffering badly', because the rent in arrears totals \$6,600.00 as of May 2023. This represents 66 months of short rent payments, each month being \$100.00 short (*i.e.* one month in 2017; plus 12 months each year from 2018 to 2022; plus five months for 2023).

As a result, the landlords drafted a 10-day Notice to End Tenancy on or about 1 February [the 'Notice']. In drafting his Notice, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 11 February 2023; and
5. stated the basis for the Notice as the Applicant's failure to pay rent in the amount of \$6,100.00 due on 1 January.

The landlords swore to me that they served this Notice by posting it on the door of the rental until on 1 February. They corroborated this evidence with a copy of a signed statement of a witness to the landlords posting the Notice on the door of the unit.

Analysis

Having heard the uncontested evidence of the landlords, I find that the Notice is an effective notice *per* section 52 of the *Residential Tenancy Act* [the 'Act'], and that they served it on the tenants on 11 February.

There is no evidence that the tenants applied for dispute resolution after receiving this Notice.

According, therefore, to section 47 (5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on 11 February 2023.

The uncontested evidence is that the landlords have lost \$6,600.00 as a result of the tenants not complying with their oral tenancy agreement with the landlords. Accordingly, I order that the tenants pay this amount to the landlords.

As the landlords succeeded in their application, I also order that the tenants reimburse them for the cost of filing this application.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay to the landlords \$6,600.00 for unpaid rent *per* section 67 of the Act, plus \$100.00 for the cost of filing this application.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 13 June 2023

Residential Tenancy Branch