



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, RP, PSF, LRE, LAT, OLC / OPR-DR, MNR-DR, FFL

Introduction

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

The Tenants seek 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);
- an order for repairs to be made to the rental unit under section 32 of the Act;
- for the Landlords to provide services or facilities required by the tenancy agreement or the Act under section 62(3) of the Act;
- to suspend or set conditions on the Landlords' right to enter the rental unit under section 70 of the Act;
- authorization to change the locks to the rental unit under section 70 of the Act; and
- for the Landlords to comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 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; and
- authorization to recover the filing fee for their Application from the Tenants under section 72 of the Act.

All three Landlords and one of the Tenants, JM, attended the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Landlords testified they served the Tenants with the Notice of Dispute Resolution Package (the Materials) for their Application via registered mail on June 2, 2023. Tenant JM confirmed their Co-Tenant received their copy of the Materials, but they themselves had not. The Landlords submitted the tracking numbers for both packages. I find that a search on the Canada Post website confirms the Co-Tenant's Materials were delivered on June 7, 2023 and the Materials addressed to JM are awaiting pick up from Canada Post. Given the above, I find the Landlords' Materials were sufficiently served on the Tenants in accordance with section 89 of the Act.

Preliminary Issue: Service of Tenants' Application

Tenant JM testified they served Materials on the Landlords in person on May 7, 2023. The Tenant stated a witness observed them serve the Landlords, but the witness was not called to present testimony and no evidence, such as a witnessed Proof of Service form, was provided by the Tenants. The Landlords denied receiving the materials and said their security camera did not pick up anyone visiting their property.

Given the above, I find on a balance of probabilities, that the Tenants' Materials were not served in accordance with the Act. As Rule 3.1 of the *Rules of Procedure* states that an applicant must serve the Materials to the respondent within three days of them being made available by the Residential Tenancy Branch, I therefore dismiss the Tenants' Application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Preliminary Issue: Previous Applications

The Tenant stated the Landlords have made previous applications which had been dismissed without leave to reapply. The Tenant questioned why the Landlords were allowed to make another application. The Tenant provided two previous application numbers which are included on the front page of this Decision.

During the hearing it was determined that one of the previous applications had been dismissed without leave to reapply as the Notice to End Tenancy had been completed incorrectly. The other application was dismissed without reapply as the Notice to End

Tenancy had not been served in accordance with the Act. The Landlords' current Application was related to an entirely different Notice to End Tenancy, so I find this is a matter I am able to hear and the matter has not be previously decided.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to recover the filing fee for the Application from the Tenants?

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 1, 2022.
- Rent is \$2,000.00 per month due on the first day of the month.
- The Tenants did not pay a security deposit to the Landlords.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Landlord testified as follows. Since the Tenants moved in to the rental property, they have not paid any rent. The Notice was issued April 20, 2023 and at that point, the Tenants owed \$12,000.00 in unpaid rent. No payments have been made since the Notice was issued, and the amount of outstanding rent is now \$16,000.00 as of June 1, 2023.

A copy of the Notice was entered into evidence by the Landlords. It is dated April 20, 2023 and provides an effective date of April 30, 2023. The amount of outstanding rent is listed as \$12,000.00 as of April 1, 2023.

The Tenant testified as follows. Rent had been paid on their behalf by "assistance" though they did not know how much had been paid or when. They had been on this

form of assistance since December 2022. They had also done work for the Landlords which covered rent. The Tenant acknowledged receipt of the Notice.

In response to the Tenant's testimony, the Landlords stated they had never received any paperwork regarding social assistance and had never received any rent payments at all, let alone any payments on behalf of the Tenants from another source.

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 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 Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore, I am satisfied that rent in the amount of \$2,000.00 was due on November 1, 2022 to April 1, 2023 inclusive.

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.

Though the Tenant testified rent had been paid by "assistance" they did not know the amount that had been purportedly paid on their behalf or when the payments were made and submitted no evidence to corroborate that the payments were made. The Landlords denied receiving any payments for rent from any source.

Given the Tenant's vague testimony and lack of evidence supporting rent payments were made, I find on a balance of probabilities that no payments were made to the Landlords in respect of rent.

Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. Though the digital copy of the Notice is not signed, the Landlords testified the copy of the Notice they served to the Tenants was signed. I also note the copy seen in the Landlords video footage entered into evidence of the Notice being served shows the Notice is signed. Therefore, I find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Landlords' Application is granted.

The Notice was served on April 20, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on April 23, 2023, the third day after it is attached in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates are automatically changed which is of relevance here as the effective date of the Notice should read May 3, 2023 instead of April 30, 2023.

Based on the above findings, the Landlords are granted an Order of Possession under section 55(1) of the Act. I find the tenancy ended on May 3, 2023 in accordance with the Notice.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlords is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$16,000.00 in unpaid rent to the Landlords.

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

Conclusion

The Landlords' Application is granted.

The Landlords are issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenants. The Tenants have two days to vacate the rental unit from the date of service or deemed service. If the Tenants

do not comply with the Order of Possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. It is the Landlords' 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	\$16,000.00
Filing fee	\$100.00
Total	\$16,100.00

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 20, 2023

Residential Tenancy Branch