



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenants: CNR, CNC, DRI
Landlord: OPR, OPL, OPN, MNRL-S

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenants applied to:

- cancel a 10 day notice to end tenancy for unpaid rent or utilities dated May 3, 2023 (the "10 Day Notice") pursuant to section 46 of the Act;
- cancel a one month notice to end tenancy for cause dated May 1, 2023 (the "One Month Notice") pursuant to section 47 of the Act; and
- dispute a rent increase above the amount allowed by law.

The Landlord applied for:

- an order of possession based on the 10 Day Notice pursuant to section 55 of the Act;
- an order of possession based on a two month notice to end tenancy for landlord's use of property pursuant to section 55 of the Act;
- an order of possession based on the Tenants' written notice to end tenancy pursuant to section 55 of the Act; and
- compensation of \$1,600.00 for unpaid rent and/or utilities pursuant to section 67 of the Act.

The Landlord attended this hearing and gave affirmed testimony.

The Tenants did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenants to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notices of dispute resolution

proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed that he served copies of the notice of dispute resolution proceeding package (the “Proceeding Package”) and documentary evidence on the Tenants in person on May 25, 2023. The Landlord submitted a signed and witnessed proof of service in support. I find the Tenants were served with the Proceeding Package and the Landlord’s evidence in accordance with sections 88 and 89 of the Act.

The Landlord submitted additional evidence in June and July 2023. However, I find there is insufficient evidence to confirm that the Landlord had served copies of such evidence on the Tenants in accordance with the Act and the Rules of Procedure. As such, I have not considered the Landlord’s additional evidence for the purpose of this decision.

Preliminary Matter – Tenants’ Non-attendance

Rules 7.3 and 7.4 of the Residential Tenancy Branch Rules of Procedure state:

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenants did not attend this hearing to present evidence regarding the merits of their application. Therefore, I dismiss the Tenants’ claim to dispute an illegal rent increase in the amount of \$200.00 without leave to re-apply. Having found the Tenants to be duly served with the Landlord’s application, I directed this hearing to proceed in the Tenants’ absence to determine whether the Landlord is entitled to an order of possession and/or compensation for unpaid rent.

Preliminary Matter – Multiple Notices to End Tenancy

For the reasons explained below, I find the 10 Day Notice should be upheld and the Landlord is entitled to an order of possession of the rental unit pursuant to the 10 Day Notice. As such, I do not find it is necessary to also consider the Tenants' claim to dispute the One Month Notice or the Landlord's claims for an order of possession based on a two month notice to end tenancy or a written notice from the Tenants.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to compensation for unpaid rent?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on September 1, 2020 and is month-to-month. Rent is \$1,100.00 per month due on the first day of month. The Tenants paid a security deposit of \$550.00. The parties do not have a written tenancy agreement.

The Landlord explained that rent included all utilities but did not include any laundry facilities in the rental unit. The Landlord stated that there was a laundromat within walking distance of the property. The Landlord submitted a copy of the Craigslist ad for the rental unit dated August 10, 2020, which confirms that there is no laundry on site. The Landlord stated that in August 2022, he did a walkthrough of the rental unit and discovered that the Tenants had installed a washing machine without his consent. The Landlord indicated that he gave the Tenants the option to remove the washing machine or to keep using it for an additional fee of \$100.00 per month for extra utilities. The Landlord explained that the Tenants agreed in writing to begin paying this amount for having the washing machine in the rental unit. The Landlord denied that he had increased the rent. The Landlord stated that the amount was to cover the utilities.

The Landlord confirmed that the Tenants paid \$1,200.00 each month from September to December 2022. The Landlord stated that the Tenants reverted to paying \$1,100.00 per month starting in January 2023. The Landlord stated that the Tenants had told him they were short on funds, but also did not remove the washing machine.

The Landlord testified that the Tenants did not pay any rent for the months of May, June, and July 2023.

The Landlord issued the 10 Day Notice to the Tenants on May 6, 2023. This notice is dated May 3, 2023 and had an effective date of May 16, 2023. It states that the Tenants failed to pay rent of \$1,200.00 on May 1, 2023. The Landlord confirmed that on May 6, 2023, he attached a copy of the 10 Day Notice to the Tenants' door, left a copy in their mailbox, and sent a copy to the Tenants via registered mail.

Analysis

1. Should the 10 Day Notice be cancelled?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I find the 10 Day Notice is in the approved Residential Tenancy Branch form, is signed and dated by the Landlord, provides an effective date of May 16, 2023, and states that the Tenants failed to pay rent of \$1,200.00 due on May 1, 2023.

Based on the Landlord's undisputed testimony, I find the Landlord was entitled to charge a \$100.00 monthly fee for laundry services not included in the rent pursuant to section 7(1)(g) of the regulations. Section 7(1)(g) states that a landlord may charge a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement. I find the \$1,100.00 rent agreed to by the parties did not include laundry services in the rental unit. However, "rent" as defined under section 1 of the Act expressly excludes a fee prescribed in the regulations. Therefore, I find the Landlord cannot claim the \$100.00 monthly amount for laundry services as unpaid rent.

I find that pursuant to section 68(1) of the Act, it is reasonable in the circumstances to amend the amount of unpaid rent stated on the 10 Day Notice to \$1,100.00. I find the Tenants knew or ought to have known that rent of \$1,100.00 was still due even if they no longer wanted to pay \$100.00 per month for laundry facilities. I find the 10 Day Notice to otherwise comply with the requirements of section 52 of the Act in form and content.

I find the Tenants were served with the 10 Day Notice on May 6, 2023 in accordance with section 88 of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment of rent or utilities, or pay the outstanding amount in full, within 5 days of receiving such a notice. The Tenants' application was amended on May 11, 2023 to dispute the 10 Day Notice. I find the Tenants submitted their claim within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I accept the Landlord's undisputed testimony that the Tenants did not pay any rent for the months of May, June, or July 2023. I find there is insufficient evidence to show that the Tenants had a legal right under the Act to withhold payment of rent during these months, totalling \$3,300.00.

I conclude the Landlord has established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenants' claim to cancel the 10 Day Notice without leave to re-apply.

2. Is the Landlord entitled to an order of possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the 10 Day Notice, as amended under section 68(1) of the Act, to comply with the requirements of section 52 of the Act in form and content, and having dismissed the Tenants' claim to dispute the 10 Day Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenants.

3. Is the Landlord entitled to compensation for unpaid rent or utilities?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3"), section 55(1.1) of the Act allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Policy Guideline 3 further states that if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I am satisfied that as of the date of the hearing, the Tenants owe unpaid rent of \$3,300.00 (\$1,100.00 × 3 months) to the Landlord for the period from May to July 2023.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay the Landlord the sum of \$3,300.00.

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenants. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord is entitled to compensation of \$3,300.00 from the Tenants for unpaid rent. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' \$550.00 security deposit in partial satisfaction of the total awarded to the Landlord.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$2,750.00** for the balance of unpaid rent awarded. This Order may be served on the Tenants, filed in the Small Claims Division of the Provincial Court, and enforced as an order of that Court.

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: July 18, 2023

Residential Tenancy Branch