Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNRT, MNDCT, OLC, FFT
CNC, FFT
OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with an application filed by both the tenants and the landlord pursuant to the Residential Tenancy Act (the "Act"):

In their first application the tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act
- a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

In their second application the tenants applied for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

The landlord applied for:

- an Order of Possession for unpaid rent and/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

CM and JW (the "Tenants") appeared at the hearing. SP appeared as lawyer for the landlord.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Both parties acknowledge receipt of the other's application materials without objection save for one text message which will be discussed below. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the Act that the parties were sufficiently served with the other's application materials save for one text message.

The text message in question is included the landlord's evidence and is titled "Text Message re utilities. The landlord served the Tenant with the text message by email July 4, 2023, and uploaded the same to the RTB website at that time. CM argued that the text message was served to them late and therefore they did not have sufficient time to respond to it.

SP argued that text message should be considered as it is the continuation of a text message conversation between the parties dated April 30th, 2023, and is therefore within the knowledge of the Tenants and of no prejudice to them. SP noted the majority of the text message conversation has been included in both parties' evidence. SP testified that when they realized that a portion of the text message conversation had been cut off, they served it to the Tenants and uploaded it to the RTB website right away.

I have considered the positions of the parties; however, I decline to consider the text message because it was served to the tenant's late leaving them an insufficient opportunity to respond.

Preliminary Matters

The Tenants applied for several orders in addition to cancellation of the 10-Day and One Month Notices. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, I find the most important issue to determine is whether this tenancy will continue. I find the Tenants' additional claims are unrelated to this issue. Therefore, the following claims made by the Tenants are dismissed with leave to reapply.

- a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
Are the Tenants entitled to recover the filing fee for this application from the landlord?
Is the landlord entitled to recover the filing fee for this application from the Tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties provided conflicting evidence as to the terms of the tenancy. SP submitted that the parties entered into a written tenancy agreement which was signed by the tenants on March 27, 2023. SP testified that as per the agreement monthly rent is $3,250.00 a month payable on the first day of the month. The landlord collected a security deposit in the amount of $1,625.00 which they continue to hold in trust; however, the pet deposit in the amount of $1,625.00 has not been paid by the Tenants.

In response to SP's submissions, CM argued that neither themselves nor JW signed the tenancy agreement. Rather, CM testified that they affixed their type-written names to the agreement which they believed they were sending to the landlord in draft format. CM testified that the landlord refused to sign the tenancy agreement and they did not see the tenancy agreement which is submitted into evidence by the landlord and contains the landlord's signature until it was sent to them as evidence for this hearing.

CM further argued that the landlord was required to attach a copy of the Housing Covenant to the tenancy agreement; however. they did not do so.

In response to CM's submissions, SP argued that the tenants have admitted to affixing their names to the tenancy agreement which equates to electronically signing the document. SP argued that electronic signatures are binding.

Further, SP submitted that on the date the Tenants forwarded the tenancy agreement to the landlord containing their electronic signature, CM paid the first month's rent and security deposit. SP argued this contradicts CM's submissions that they believed they were sending the tenancy agreement to the landlord in draft format. Included in the landlord's evidence is a text message conversation between CM and the landlord dated March 27, 2023, which supports that the first month's rent and security deposit were paid by the Tenants in two payments on March 27, 2023. and March 28, 2023.

SP submitted that to their knowledge the landlord signed the tenancy agreement and provided a copy to the Tenants. With regard to the Housing Covenant, SP argued that the absence of the Housing Covenant attached to the tenancy agreement does not invalidate the tenancy agreement.

SP submitted that the landlord served the Tenants with the 10-Day Notice by attaching a copy of the 10-Day Notice to the door of the rental property on May 9, 2023. The Tenants acknowledged receipt of the same.

SP testified that the 10-Day Notice was issued because the Tenants failed to pay rent in the amount of $3,250.00 for the month of May 2023. SP further noted that at the time the 10-Day Notice was issued, the Tenants had also failed to pay the utilities following a written demand from the landlord on April 30, 2023.

SP conceded that the amount indicated on the 10-Day Notice for utilities is incorrect and the amount demanded from the tenant on April 30, 2023, is also incorrect. SP testified that the tenants have not paid any rent since the 10-Day Notice was issued and rent is currently outstanding for May, June, and July. SP further testified that although the amount of utilities were incorrect on the 10-Day Notice and on the written demand dated April 30, 2023, the Tenant was and is aware of the amount owing as it evident by their Monetary Order Worksheet evidence document and the tenants have made no efforts whatsoever to pay the outstanding rent and utilities.

In response to SP's testimony with regard to the utilities noted on the 10-Day Notice, CM testified that they do not believe it is fair that the landlord can demand payment for an incorrect amount and then list an incorrect amount on the 10-Day Notice. CM testified that the landlord has never confirmed the correct amount of utilities that they are seeking payment for.

CM argued that in accordance with the *Whistler Housing Authority* and the *Land Titles Act* the maximum rent the landlord is permitted to charge is $1,019.21. CM testified that the landlord claims the additional amount over and above $1,019.21 is for parking and a storage shed. CM testified that is an unreasonable amount. CM testified that the landlord claims that they owed $3,250.00 for rent but the landlord cannot legally charge that amount for rent for this property.

Analysis

Pursuant to section 9.1 of the Act, I have been delegated the authority to decide matters as they relate to the *Residential Tenancy Ac*t. Importantly, my authority does not extend beyond the *Residential Tenancy Act* to any other Act.

Section 1 of the Tenancy Act defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, CM suggested that the tenancy agreement which has been submitted into evidence by the landlord is not in effect. However, I disagree.

I find that the landlord has provided sufficient evidence to establish that the Tenants affixed their electronic signatures to the tenancy agreement on March 27, 2023 and that the Tenants paid the first month rent in the amount of $3,250.00 and security deposit in the amount of $1,650.00 in two separate payments on March 27, 2023 and March 28, 2023 thus giving effect to the agreement. I find the text message conversation between CM and the landlord clearly show the tenants intention to enter in the tenancy agreement with the landlord on the terms stated therein.

I also note that while it may have been a requirement under the Land Titles Act for the landlord to affix the Housing Covenant to the tenancy agreement, there is nothing in the Residential Tenancy Act or prior jurisprudence to support that that the landlord’s failure to follow the requirements of an Act outside of my jurisdiction should cause me to find that the tenancy agreement is not valid. On that basis, I find in favour of the landlord that a tenancy agreement exists between the parties with monthly a monthly rent of $3,250.00 payable on the first day of the month.

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

There are six lawful reasons for a tenant to withhold rent under the Act.

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord’s use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and,

6. When the landlord consents to the tenants withholding rent.

Importantly, the Tenants have not disputed that they have not paid rent for May, June and July 2023. Rather, CM argues that the rent is not lawful according to Whistler Housing Authority and Land Titles Act. I have considered the Tenants' evidence and testimony on these points; however, I find that whether the amount of rent that was agreed to by the parties is greater than what is permitted by the Land Titles Act or the Whistler Housing Authority is not within my jurisdiction to determine. Rather, as previously stated, I find that the Tenants entered into a tenancy agreement with the landlord and agreed to monthly rent in the amount of $3,250.00. The Tenants have not established any lawful reason under the Residential Tenancy Act to withhold rent and have not complied with section 26 of the Act.

The landlord issued the 10-Day Notice because the Tenants failed to pay rent for the month of May 2023 and the undisputed evidence is that the Tenants have not paid rent for the month of May, June or July 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. The undisputed evidence of the parties is that the Tenants have not paid rent for the month of May, June and July 2023. Therefore, the tenant is ordered to pay $9,750.00 in unpaid rent to the landlord.

With regard to the utilities, I find that the 10-Day Notice was prematurely issued in this regard. Section 46(6) of the Act states that if a tenancy agreement requires a tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charge as rent and may give notice under this section. In this case, the landlord texted the tenant on April 30th to inform them of the utility charges and served the tenant with the 10-Day Notice on May 9th, 2023. Therefore, I find the utilities had not been outstanding more than 30 days at the time the 10-Day Notice. For that

reason, the utilities were not considered unpaid for the purpose of the 10-Day Notice and should not have been included therein.

As a result, I decline to make any findings as to whether the utilities are owed.

Because this tenancy is ending as a result of the 10-Day Notice, I find it unnecessary to determine whether this tenancy should end by way of the One Month Notice.

The Tenants' application to cancel the One Month Notice is dismissed without leave to reapply.

The landlord continues to hold the tenant's security deposit of $1,650.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary order.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee paid for this application.

As the Tenants were unsuccessful in their applications, they are not entitled to recover the filing fee paid for their applications.

Conclusion

The landlord is granted an order of possession which will be effective two days after service upon the Tenants. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of $8,200.00 as follows:

Item	**Amount**
Rent due May, June, July 2023	$9,750.00
Filing Fee	$100.00
Security Deposit	(-$1,650.00)
Total Monetary Order	$8,200.00

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 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 13, 2023

Residential Tenancy Branch