



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

CNR, CNC-MT, FFT
OPR, OPC, MNRL-S, MNDCL-S, FFL

Introduction

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

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
- cancellation of the landlord’s One Month Notice and an extension of the time limit to dispute the One Month Notice pursuant to section 47
- 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 based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the Act
- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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

RB and MM attended the hearing as agents for the landlord. LF and KB (the “Tenants”) attended the hearing.

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.

The Tenants confirmed that they serve the landlord with a copy of the Notice of Dispute Resolution Proceeding Package (the “Tenant’s Proceeding Package”) and their evidence by

pre-agreed email. MM confirmed receipt of the same. Based on the agreement of the parties, I find that the landlord was sufficiently served pursuant to section 71(2) of the Act with the Tenant's Proceeding Package and their evidence

The Tenants testified that they did not serve the landlord with their Tenant Request to Amend a Dispute Resolution Application in which they added an application to cancel the landlord's One Month Notice and an extension of the time limit to dispute the One Month Notice pursuant to section 47. The landlord confirmed that they were not aware of the Amendment.

Rule 4.6 of the Rules of Procedure requires that an Amendment to an Application for Dispute Resolution must be produced and served upon each responded in a manner required under section 89 of the Act. In this case, the parties agree that the Tenants' Request to Amend a Dispute Resolution Application was not served to the landlord. As a result, I dismiss the Tenant's application to cancel the landlord's One Month Notice and an extension of the time limit to dispute the One Month Notice pursuant to section 47 without leave to reapply.

The Tenants confirmed that they were served with the Landlord's Notice of Dispute Resolution Proceeding Package by registered mail. However, the Tenant's disputed that they received the Landlord's evidence package. MM testified that they served each Tenant with a copy of their evidence by registered mail on June 14^h, 2023. MM provided two Canada Post Tracking Numbers to confirm the same. I accept MM's testimony on this point and find that the evidence was sent to each tenant by registered mail on June 14th, 2023.

Pursuant to section 90 of the Act a document served in accordance with section 88 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the Tenants are deemed to have received the materials on June 19, 2023, in accordance with section 90(a) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?
Should the landlord's 10 Day 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 confirmed the following details of the tenancy. The parties entered into a written tenancy agreement on September 1, 2022. Rent is \$1,800.00 payable on the first day of the month. The landlord collected a security deposit in the amount of \$800.00 and a pet deposit in the amount of \$800.00 which the landlord continues to hold in trust. The tenancy agreement is submitted into evidence.

MM testified that the landlord served the Tenants with the 10-Day Notice by registered mail on May 28, 2023. In support of this MM provided two Canada Post Tracking Numbers. The Tenants acknowledged receipt of the 10-Day Notice.

The 10-Day Notice is submitted into evidence and indicates that it was issued because the Tenants failed to pay rent in the amount of \$2,600.00 which was due on May 1, 2023. MM testified that the Tenants failed to pay rent in full for the month of April 2023. Therefore, at the time the 10-Day Notice was issued rent was outstanding in the amount of \$800.00 for April and \$1,800.00 for May. MM testified that since the 10-Day Notice was issued the Tenants have not paid any rent for June or July 2023. MM testified that currently rent is outstanding in the amount of \$6,200.00. MM directed my attention to their Monetary Order Worksheet which is submitted into evidence. MM testified that the landlord is seeking an order of possession and monetary order for unpaid rent.

LF confirmed that \$6,200.00 in rent is outstanding. However, they reiterated that they paid a pet and security deposit to the landlord. LF testified that they have been unable to bring in income due to their injury and they are waiting on insurance information from the landlord so that they can make an insurance claim. The Tenants testified that the landlord is refusing to provide them with the information they require and is not willing to accommodate them or work with them during this time.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. 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*.

There are six lawful reasons under the Act that a tenant may withhold rent.

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.

I have considered the testimony and evidence of the Tenants; however, I find that they have not established that they have a legal right to withhold rent.

Based on the evidence of the landlord and the uncontested evidence of MM, I find that at the time the 10-Day Notice was issued rent was outstanding in the amount of \$2,600.00 because the Tenants failed to pay \$800.00 that was due April 1, 2023, and did not pay any rent that was due May 1, 2023. Therefore, I find that the 10-Day Notice was given for a valid reason, namely, the non-payment of rent. I also find that the 10-Day Notice complies with the form and content requirements of section 52. As a result, the Tenants' application to cancel the 10-Day 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 Tenants have 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. Therefore, the Tenants are ordered to pay \$6,200.00 in unpaid rent to the landlord.

The landlord continues to hold the Tenants' security of \$800.00 and pet deposit of \$800.00 in the amount totalling \$1,600.00. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the Tenants' security and pet deposit in partial satisfaction of the monetary orders.

While I have dismissed the Tenants' application to cancel the One Month Notice, because tenancy is ending by way of the 10-Day Notice, I do not find it necessary to consider the One Month Notice and make no findings in that regard.

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

As the landlord was successful, I find that they are entitled to recover the filing fee paid for this application from the Tenants.

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 \$4,700.00 as follows:

Item	Amount
Rent Outstanding April 2023	\$800.00

Rent due May, June, July 2023 (3 x \$1,800.00)	\$5,400.00
Filing Fee	\$100.00
Security Deposit	(-\$800.00)
Pet Deposit	(-800.00)
Total Monetary Order	\$4,700.00

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 17, 2023

Residential Tenancy Branch