



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1072781 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with the Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice) under sections 46 and 55 of the Act
- An order for repairs made to the unit, site or property
- An order to suspend or set condition on the Landlord's right to enter the rental unit
- Authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55 of the Act
- A monetary order for unpaid rent
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Issues to be Decided

Should the Landlords' 10-Day Notice be cancelled? If not, are the Landlords entitled to a Monetary Order and Order of Possession?

Are the Tenants entitled to an order for the Landlord to make repairs to the rental unit?

Are the Tenants entitled to an order to suspend or set condition on the Landlord's right to enter the rental unit?

Are the Tenants or the Landlord entitled to recover the filing fee for this application?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on June 1, 2022, with a monthly rent of \$22,500.00, due on first day of the month, with a security deposit in the amount of \$11,250.00.

The Landlord served a 10-Day Notice for unpaid rent and utilities on the Tenants on June 24, 2023. The Tenants disputed the 10-Day Notice and applied for an order for repairs and to suspend or set conditions on the Landlord's right to enter the rental unit. The Landlord filed a cross application asking for an Order of Possession and Monetary Order.

The undisputed evidence of the Landlord's property manager RL (the "Property Manager") is that the Tenants did not pay rent for June 2023 and utilities, so they served the 10-Day Notice. After the 10-Day Notice was served the Tenants continued to occupy the rental unit and did not pay rent for July, August or September 2023. The total amount owed for unpaid rent is \$90,000.00. The Property Manager stated that because the Tenants were from out of province, they agreed to pay last month's rent and the \$11,250.00 security deposit.

The Property Manager also argued that the Tenants owe \$5,870.60 for unpaid utilities. The Property Manager pointed to a written demand letter from December 27, 2022, for \$2,625.18 in unpaid utilities (the "1st Demand Letter"). A subsequent demand letter was sent for utilities on the same day as the 10-Day Notice which increased the unpaid utilities to \$3,771.91 (the "2nd Demand Letter"). Another demand letter was sent for utilities on August 28, 2023, increase the unpaid utilities to \$5,870.16 (the "3rd demand letter").

Analysis

Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10-Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10-Day Notice or dispute the 10-Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10-Day Notice was duly served to the Tenants on June 24, 2023, and that the Tenant had until June 29, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears. The Tenants disputed the 10-Day Notice within the time frame required.

The Tenants did not attend the hearing to present any legal reason for withholding rent.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

For the above reason, the Tenants' application for cancellation of the 10-Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a Tenant makes an application to set aside a Landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the Landlord an order of possession if the notice complies with section 52 of the Act. I find that the 10-Day Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a Tenant makes an application to set aside a Landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the Landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the 10-Day Notice complies with section 52 of the Act.

A landlord may treat unpaid utilities as unpaid rent if the tenancy agreement requires the tenant to pay utility charges and if the tenant is given a written demand for payment 30 days before a 10-day notice is issued.

The tenancy agreement is submitted into evidence and requires the Tenants pay utility charges.

The Property Manager issued the 1st Demand Letter for a portion of the utilities in December 2022 and then the 2nd Demand Letter was sent June 24, 2023. I find the 2nd Demand Letter was not sent 30 days prior to the 10-Day Notice. I find that the unpaid

utilities listed in the 1st Demand Letter qualifies as unpaid rent; however, the 2nd Demand Letter did not meet the requirements of section 46 of the Act. I find that the Tenants owe \$2,625.18 for the unpaid utilities listed in the 1st Demand Letter. The Landlord is at liberty to reapply for the remaining unpaid utilities after they have complied with section 46 of the Act.

While the 10-Day Notice was issued for unpaid rent up until June 2023, the undisputed evidence of the Landlord is that the Tenants continued to occupy the rental unit and failed to pay rent for July, August and September 2023. The total amount of unpaid rent is \$90,000.00. The amount of unpaid rent is over the small claims limit; however, pursuant to Policy Guideline 27, the small claims monetary limit does not apply to a monetary order for unpaid rent that arises from a tenant's application to cancel a notice to end tenancy for unpaid rent. While the Landlord also applied for a monetary order for unpaid rent, the Tenants applied to cancel the 10-Day Notice and I grant the Monetary Order based on the Tenants' application.

Pursuant to the definition of "security deposit" in the Act, last month's rent forms part of the security deposit and it must not exceed one-half of one month's rent. Despite the agreement between the parties, last month's rent of \$22,500.00 and the security deposit of \$11,250.00 puts the security deposit over the allowable limit. The Tenants are entitled to the return of the excess amount; however, since the Tenants owe money for unpaid rent, I will set off this amount against the unpaid rent owed, pursuant to section 72 of the Act.

Pursuant to section 72 of the Act, I authorize the Landlord to keep the security deposit as partial satisfaction of the unpaid rent owed.

I grant the Landlord a monetary order for **\$58,975.18**.

Request for Repairs and to set Conditions or Suspend the Landlord's Right to Enter the Rental Unit

The Tenants did not attend the hearing to present any evidence.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Additionally, since I have ended the tenancy based on the 10-Day Notice it is not necessary for me to consider these issues. Based on the above, I dismiss the Tenants' requests to have repairs completed and to suspend or set conditions on the Landlord's right to enter the rental unit.

Are the Tenants or Landlord entitled to recover the filing fee for this application?

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for their application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

As the Landlord was successful in their application, the Landlord's application to recover the filing fee for their application from the Tenants is granted.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenants**. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a Monetary Order in the amount of **\$58,875.18** under the following terms:

Monetary Issue	Granted Amount
unpaid rent under section 55(1.1) of the Act	\$90,000.00
unpaid utilities under section 55(1.1) of the Act	\$2,625.18
recovery of the filing fee	\$100.00
deduct security and pet damage deposit under section 72 of the Act	- \$33,750.00
Total Amount	\$58,975.18

The Landlord is provided with this Order in the above terms and 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.

The Tenants' application for cancellation of 10-Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act is dismissed, without leave to reapply.

The Tenants' application to suspend or set conditions on the landlord's right to enter the rental unit is dismissed, without leave to reapply.

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: September 18, 2023

Residential Tenancy Branch