



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an order of possession and a monetary order for unpaid rent or utilities, an order permitting the landlords to keep all or part of the security deposit, and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing, and one of the landlords and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other.

The parties agree that all evidence has been exchanged, with the exception of late evidence filed by the landlords. All evidence except the landlords' late evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2023 was issued in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 20, 2021 and reverted to a month-to-month tenancy after May 31, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,857.42 is currently payable on the 1st day of each month. On May 19, 2021 the landlords collected a security deposit from the tenant in the amount of \$897.50 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment; the landlords do not reside on the property. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on June 2, 2023 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by email and by regular mail, and a copy has been provided for this hearing. It is dated June 2, 2023 and contains an effective date of vacancy of June 15, 2023 for unpaid rent in the amount of \$1,857.42 that was due on June 1, 2023. The tenant has not paid the rent, and arrears have continued to accumulate. The tenant has not paid any rent since the Notice was issued, and is now in arrears the sum of \$7,429.68. The tenant has not served the landlords with a Notice of Dispute Resolution Proceeding disputing the Notice.

The landlords had also served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property, which was sent to the tenant by Xpress Post on May 28, 2023. It was delivered on May 30, 2023 and contained an effective date of vacancy of July 31, 2023.

The tenant testified that prior to this hearing the tenant asked the landlords to serve the Two Month Notice to End Tenancy For Landlord's Use of Property properly. The tenant also asked if the landlords would have at this hearing a copy of when it was re-served. Since that time, the landlords have not complied with the *Residential Tenancy Act*, but have been banging on the door and threatening eviction.

Since the end of May, 2023 there have been many problems and situations, including the landlords barging their way into the rental unit, which is an illegal suite.

The tenant has not paid the rent because the landlords have not complied with the terms of the tenancy agreement.

The tenant has not disputed any notices to end the tenancy given by the landlords.

Analysis

In this matter, the tenant mentioned several times that the landlords have not complied with the *Act* or the tenancy agreement. However, the law states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement.

Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent or dispute it by filing and serving the landlord with a Notice of Dispute Resolution Proceeding. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

The tenant did not dispute the Notice and did not pay the rent. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia and enforced.

I am also satisfied in the evidence and testimony of the parties, that the tenant is in arrears of rent the sum of \$7,429.68 for 4 months.

Since the landlords have been successful with the application the landlords are also entitled to recover the \$100.00 filing fee from the tenant.

I order the landlords to keep the \$897.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenant for the difference in the amount of \$6,632.18 ($\$7,429.68 + \$100.00 - \$897.50 = \$6,632.18$). The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlords effective on 2 days notice to the tenant.

I further order the landlords to keep the \$897.50 security deposit, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,632.18.

This order is final and binding and may be enforced.

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 26, 2023

Residential Tenancy Branch