



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNRL-S, MNDL, MNDCL, FFL, OPC

Introduction

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

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and utilities under section 67 of the Act
- compensation for damage caused by the Tenants, their pets or guests under section 67 of the Act
- an Order of Possession based on a One Month Notice to End Tenancy For Cause under section 47 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant S.M. was served on July 28, 2023, by registered mail in accordance with section 89(1) of the Act, and deemed to have received it on August 2, 2023, the fifth day after the registered mailing, under section 90 of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant D.S. was served on July 28, 2023, by registered mail in accordance with section 89(1) of the Act, and deemed to have received it on August 2, 2023, the fifth day after the registered mailing, under section 90 of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

No evidence was submitted by the Tenants.

Preliminary Matters: Amendment to Application

The Landlords submitted a request to amend their application on October 10, 2023, to include compensation for damages and monetary loss caused by the Tenants. The Landlords provided registered mail tracking numbers as proof of service to the Tenants of copies of the amendment request and supporting documentation.

Based on the above, the request to amend the application for dispute resolution is granted.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the Landlords entitled to a Monetary Order for unpaid rent and utilities?

Are the Landlords entitled to compensation for damage caused by the Tenant, their pets or guests under section 67 of the Act?

Are the Landlords entitled to an Order of Possession based on a One Month Notice to End Tenancy For Cause under section 47 of the Act?

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

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

Evidence and testimony was provided that showed that the tenancy began on November 15, 2022 with a monthly rent of \$3,200.00 due on the first day of the month and a \$1,600.00 security deposit currently held in trust by the Landlords. The Tenants are responsible for two thirds of the hydro, water and septic utility costs.

According to the Landlords, a 10 Day Notice was served to Tenant S.M. in person on July 5, 2023, for unpaid rent in the amount of \$3,200.00. The Landlords testified that following the notice no rent has been received to date. A copy of the Landlords ledger was submitted into evidence showing unpaid rent for July to October 2023.

Landlord A.D. stated that demand letters for the unpaid utilities were hand delivered to the Tenants on July 23, August 5 and September 14, 2023, for a total of \$1,007.36. Copies of the notices and associated utility bills were submitted into evidence confirming this testimony.

Landlord A.D. testified that two floods occurred on the property. The first happened on July 10, 2023, when water came in through the ceiling of the lower suite tenant's bathroom. Landlord A.D. stated that a plumber was called to attend to the situation and advised her the flooding was caused by overflow in the waste, overflow and tub spout. The Landlord further indicated that she believed it was caused by the Tenant's tub overflowing. A copy of the plumber's invoice in the amount of \$652.60 was submitted into evidence which indicates that the source of the leak appeared to be the waste, overflow and tub spout, two of which were either replaced or resealed.

According to Landlord A.D., the second flood occurred in the lower suite on September 8, 2023, when the lower tenant's toilet backed up and sewage flowed from his bathroom and into the living room. She stated that the plumber attended the residence again and determined that an object of some kind was slowing down the plumbing causing it to back up. Landlord A.D. testified that he did not specify where it was in the system but that she suspected the Tenants up starts flushed something to create a problem in the sewer system. A copy of an invoice from the plumber in the amount of \$1,497.42 was submitted by the Landlords into evidence which does not indicate a source of the issue but does indicate that the water is draining and that the septic tank appears to be cracked.

Landlord A.D. indicated that her insurance will be covering the damages but is seeking \$2,500.00 to compensate the Landlords for the deductible. A copy of the Landlords insurance claim was submitted into evidence.

According to Landlord A.D. the Tenant's damaged the garage door by sticking a screwdriver into the operating mechanism. A copy of the invoice to repair the door in the amount of \$220.66 was submitted into evidence.

A copy of a One Month Notice to End Tenancy For Cause was served on the Tenants on August 5, 2023.

Analysis

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

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(s) do 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 served to the Tenants on July 5, 2023, and that the Tenants had until July 10, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the evidence before me, I find the Tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenants to take either of these actions within five days, I find the Tenants are conclusively presumed to have accepted the end of this tenancy on July 15, 2023, the deemed effective date on the 10 Day Notice. In this case, the Tenants and anyone on the premises were required to vacate the premises by July 15, 2023, per section 53 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act.

Are the Landlords entitled to a Monetary Order for unpaid rent and utilities?

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, the undisputed testimony of the Landlords and on the balance of probabilities, I find that the Landlord has established a claim for unpaid rent and utilities owing for July to November 2023.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlords are entitled to a monetary award for unpaid rent and utilities under section 67 of the Act, in the amount of \$17,007.36. Based on section 38(4) of the Act, I order the Landlords to retain the Tenants' security deposit in the amount of \$1,628.66, including interest, in partial satisfaction of the unpaid rent and utilities.

Are the Landlords entitled to compensation for damage caused by the Tenant, their pets or guests under section 67 of the Act?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords claim for damages to the garage door resulting from a screwdriver being inserted into the control mechanism are not supported by evidence that the Tenants were the ones who did it. The Landlords did not say how they determined it was the Tenants or if the tenant in the lower unit had access to the garage.

Based on the first invoice for plumbing services submitted by the Landlords regarding damages that occurred due to water leakage on July 10, 2023, I find that the document does not state that the flooding occurred because of a tub overflow but rather from leaks in the waste, overflow and spout mechanisms which required service and replacing.

Based on the second invoice for plumbing services submitted by the Landlords regarding damages resulting due to a sewage back up in the lower unit suite on September 8, 2023, I find that the document does not specify how or why the sewage backed up but rather notes that the drainage is flowing, and that the septic tank appears to be cracked. I further find that, as the plumber did not attribute the cause to the Tenant's unit, the system is shared between the two units and the flooding occurred in the lower suite, the Landlords have not proven that the Tenants were responsible for the flooding that occurred on September 8, 2023.

Based on the above, the Landlords request for compensation for damages under section 67 of the Act is dismissed without leave to reapply.

Are the Landlords entitled to an Order of Possession based on a One Month Notice to End Tenancy For Cause under section 47 of the Act?

As the Tenant's are conclusively presumed to have accepted the end of the tenancy under section 46(5), this notice is no longer relevant and therefore the Landlords' application is dismissed without leave to reapply.

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **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 Landlords a Monetary Order in the amount of **\$15,478.70** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$17,007.36
authorization to keep the Tenants' security deposit including interest under section 38(4) of the Act	-\$1,628.66
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$15,478.70

The Landlords are 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 Landlords' application for compensation for damages under section 67 of the Act is dismissed without leave to reapply.

The Landlords' application for an Order of Possession based on a One Month Notice under section 46 of the Act is dismissed without leave to reapply.

The Landlords' application to recover the filing fee under section 72 of the Act is granted.

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: December 01, 2023

Residential Tenancy Branch