



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL
CNR, MNDCT, RR, RP, PSF, LRE, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord (Landlord's Application) under the *Residential Tenancy Act* (the Act) on April 17, 2024, seeking:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act;
- a Monetary Order for unpaid rent under section 67 of the Act;
- retention of the security deposit; and
- recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenants (Tenants' Application) under the Act on April 16, 2024, seeking:

- cancellation of the 10 Day Notice;
- compensation for monetary loss or other money owed;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- an order for the Landlord to make repairs to the unit, site, or property;
- and order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of

these documents as follows. The Landlord and their son testified that on April 23, 2024, the Notice of Dispute Resolution Proceeding (NODRP), which contains the Application and the Notice of Hearing, as well as the documentary evidence before me, was sent to each of the Tenants at the rental unit address by registered mail. The Landlord provided me with the registered mail tracking numbers, a witnessed and signed RTB-55, and the registered mail purchase receipts. I therefore deem the packages served five days later, on April 28, 2024, pursuant to sections 59(3), 88(d), 89(1)(d), and 90(a) of the Act.

I verified that the hearing information contained in the NODRP was correct and note that the Landlord and their son were able to attend the hearing on time using this information. Further to this, I note that the Tenants were provided with a copy of the hearing information as part of the NODRP for their own Cross-Application. As a result, the hearing of the Landlord's Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenants or an agent acting on their behalf. Although the teleconference remained open for the 56-minute duration of the hearing, no one attended on behalf of the Tenants.

Although the Landlord acknowledged receipt of the Tenants' NODRP, the Tenants failed to appear at the hearing of their own Application, or to send someone to the hearing to act on their behalf. I therefore dismiss the Tenants' Application, in its entirety, without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice?

Is the Landlord entitled to recover unpaid rent under section 67 of the Act?

Is the Landlord entitled to retention of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that this tenancy began on February 15, 2024, at a monthly rent of \$2,200.00, which was due on the first day of each month. They also stated that the Tenant's paid a \$1,100.00 security deposit on February 4, 2024, which is still held in trust. A copy of the tenancy agreement was submitted.

The Landlord and their son stated that the Tenants did not pay rent on April 1, 2024, as required, and only paid partial rent in the amount of \$1,500.00 on April 2, 2024. As a result, they stated that the 10 Day Notice was personally served on April 10, 2024, for the remaining balance owed of \$700.00.

The 10 Day Notice before me is on the 2023 version of the approved Branch form, is signed and dated April 10, 2024, has an effective date of April 21, 2024, and states that as of April 1, 2024, the Tenants still owed \$700.00 in outstanding rent.

The Landlord and their son stated that no further rent was paid for April and no rent was paid for May. They stated that although the Tenants have not given notice or communicated with them, they believe from security camera footage and information from another tenant at the property that the Tenants vacated on May 16, 2024. They have not been seen at the property since. The Landlord stated that as they are not positive that the Tenants have vacated and no keys have been returned, they are still seeking an Order of Possession as the Tenants neither paid the outstanding rent owed nor filed their application for dispute resolution on time.

Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

As there is no evidence or testimony before me to the contrary, I accept the following as fact:

- rent in the amount of \$2,200.00 is due on the first day of each month;
- the Tenants paid only \$1,500.00 in rent for April on April 2, 2024;
- no further rent has been paid;
- the 10 Day Notice was personally served on April 10, 2024.

Section 46(4) of the Act states that a tenant may either pay the amount shown in outstanding rent, or dispute a notice under this section by making an application for dispute resolution within 5 days after the date the tenant receives the notice. Section 46(5) of the Act also states that if a tenant who has received a notice under this section does not comply with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Based on the above, I find that the Tenants had until April 15, 2024, to either pay the \$700.00 in overdue rent, or file an application for dispute resolution with the Branch seeking its cancellation. The Tenants did neither. Although the Tenants filed an application for dispute resolution seeking cancellation of the 10 Day Notice, they did not do so until April 16, 2024, which is six days after the date I find they were personally served with the 10 Day Notice. They also did not seek an extension of the five-day time limit set out under section 46(4) for disputing the 10 Day Notice. Finally, no one attended the hearing on behalf of the Tenants to present any arguments or evidence in support of the Tenants' Application and their Application was therefore dismissed in its entirety without leave to reapply.

As a result of the above, I find that the tenancy ended on the effective date of the 10 Day Notice, April 21, 2024, by way of conclusive presumption under section 46(5) of the Act. The Tenants were therefore required to vacate the rental unit by that date. As they did not, I find that they have been overholding the rental unit. Although the Landlord and their son stated that the Tenant's have not been seen at the rental unit since May 16, 2024, and they believe they have moved out, they cannot be sure as the Tenants did not communicate with them or leave the keys and they are currently out of the country.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As I am satisfied that the 10 Day Notice complies with section 52 of the Act, the effective date of the 10 Day Notice has passed, the Tenants have not paid rent in more than a month, and the Landlord suspects that the Tenants have abandoned the rental unit, I grant the Landlord an Order of Possession effective two days after service on the Tenants.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

Section 57(1) of the Act defines an overholding tenant as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline (Guideline) 3 states that compensation for overholding is calculated on a *per diem* basis until the Landlord recovers possession of the rental unit.

As there is no evidence before me that the Tenants had a right to withhold or deduct the rent under the Act at the time it was due, I find that they did not. Pursuant to section 67 of the Act, the Landlord is therefore granted recovery of \$700.00 in combined outstanding rent and compensation for overholding for April of 2024, and \$1,518.93 in compensation for overholding the rental unit in May of 2024 up to and including the date of the hearing. The *per diem* rent has been calculated as follows:

Formula	Calculation
monthly rent amount x 12 months = X	\$2,200.00 x 12 = \$26,400.00
X/365 days = Y	\$26,400.00/365 = \$72.33
Y x number of days of overholding = compensation owed for overholding	\$72.33 x 21 = \$1,518.93

As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, and with the Landlord's agreement, I therefore authorize the Landlord to retain the \$1,108.76 security deposit and interest currently held in trust towards the \$2,318.93 owed for outstanding rent, compensation for overholding, and recovery of the filing fee.

As a result, I grant the Landlord a \$1,210.17 Monetary Order under section 67 of the Act for the remaining balance owed to them by the Tenants.

Conclusion

Pursuant to sections 55(2)(b) and 55(3) of the Act, I grant an Order of Possession to the Landlord effective **two days after service** of this order on the Tenants. 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, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,210.17**. 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, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Pursuant to section 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 57(3) of the Act, the Landlord may seek further compensation for overholding or monetary loss if such a loss is suffered, by filing an application for dispute resolution seeking recovery of any lost rent or compensation for overholding after May 21, 2024, should they wish to do so. They may also file an application for dispute resolution seeking recovery of cleaning and repair costs if the rental unit is not left in the required state of cleanliness and repair. However, the matter of the security deposit has been conclusively dealt with.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: May 21, 2024

Residential Tenancy Branch