

DECISION

Introduction

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

The Tenants applied for:

- cancellation of the Landlords’ Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) and an extension of the time limit to dispute the Two Month Notice under sections 49 and 66 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

The Landlords applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to sections 49 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

Tenant CG and AG attended the hearing for the Tenants.

Landlord LL attended the hearing for the Landlords with DM attending as their lawyer.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord acknowledged receipt of the Tenant's Proceeding package by registered mail but indicated that the package only contained the Notice of Dispute Resolution Proceeding and the Respondent Instructions for Dispute Resolution. The Tenants testified that they believed they served the Landlords with their evidence in the same package.

Residential Tenancy Branch Rule of Procedures 3.5 requires that during the hearing, the applicant, in this case, the Tenants, must be prepared to demonstrate to the satisfaction of the director that each respondent, in this case, the Landlord, was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure. Rule of Procedure 3.14 requires that all evidence upon which the applicant intends to rely must be received by the respondent not less than 14 days before the hearing.

In this case, I find that the Tenants have not demonstrated to my satisfaction that they served the Landlords with the evidence upon which they intend to rely. For that reason, I find it would not be procedurally fair to the Landlords to consider the Tenants' evidence. I have excluded the Tenants' evidence from my consideration on that basis.

With that said, I find that the Landlords were served with the Notice of Dispute Resolution Proceeding and Respondent's Instructions in accordance with section 89 of the Act.

The Landlord testified that they served the Tenants with their Proceeding Package, evidence and Request to Amend a Dispute Resolution Application by registered mail. The Tenants acknowledged receipt of the same. Based on this, I find the Tenant's were served with the Landlords' Proceeding Package, evidence and Request to Amend a Dispute Resolution in accordance with section 88 and 89 of the Act.

Preliminary Matters

The Tenant's applied for:

- an order to suspend or set conditions on the Landlords' right to enter the rental unit under section 70(1) of the Act; and,
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

However, as discussed in the “Analysis” section of this decision, I have determined that this tenancy is ending based on the Two Month Notice. For that reason, I find the above noted applications are no longer relevant to the circumstances of the parties. Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. Accordingly, I exercise my authority under section 62(4)(b) of the Act to dismiss the Tenants’ application for an order to suspend or set conditions on the Landlords’ right to enter the rental unit under section 70(1) of the Act and, the Tenants’ application for the Landlords to comply with the Act, regulation or tenancy agreement.

Issues to be Decided

Are the Tenants entitled to more time to cancel the Landlords’ Two Month Notice?

If so, should the Landlords’ Two Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to an Order of Possession based on unpaid rent?

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

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Background and Evidence

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

The parties agreed that this tenancy began on July 22, 2022, with previous landlords. The Landlord testified that they purchased the property in April 2024 and took over the tenancy from the previous landlords. Monthly rent is \$5,788.50, due on the 10th day of the month. The previous landlords collected a security deposit in the amount of \$1,900.00 which the Landlords continue to hold in trust. A copy of a written tenancy agreement dated and signed on July 20, 2022, is submitted into evidence by the Landlord. The Landlord further submitted a document titled “Lease Addendum” dated

and signed December 17, 2023. The parties agreed that at this time occupancy of the basement rental unit was added to the tenancy agreement.

The Landlord testified that they served the Tenants with the Two Month Notice by registered mail on April 25, 2024. The Landlord submitted a Canada Post Customer Receipt containing a tracking number to confirm this service. The Landlord testified that they also contacted the Tenants to advise them that the Two Month Notice was sent to them by registered mail. The Tenants testified that they were very busy in April with their businesses and did not check their mail for approximately 10 days. The Tenants acknowledged receipt of the Two Month Notice on May 8, 2024.

The Landlord submitted the Two Month Notice into evidence. The Two Month Notice is dated April 25, 2024, and lists an effective move out date of July 9, 2024. The Two Month Notice indicates in the "Reason for this Two Month Notice" section that "the rental unit will be occupied by the landlord or the landlord's close family member and specifies that the close family member is the landlord or the landlord's spouse.

The Tenants testified that when they received the Two Month Notice they were very busy with their businesses as it was tax season. The Tenants testified that they sought counsel and advice as to how to proceed with the Two Month Notice. The Tenants testified that due to these factors, they did not apply to cancel the Two Month Notice until May 27, 2024.

The Landlords submitted documentary evidence to support that they intend to occupy the rental unit for the purpose stated on the Two Month Notice.

The Landlord testified that the Tenants failed to pay rent that was due on June 10th, 2024, in the amount of \$5,788.50. For this reason, the Landlord testified that on June 11th, 2024, they issued a 10-Day Notice to the Tenants by registered mail. The Tenants acknowledged receipt of the 10-Day Notice.

The Landlord testified that since the 10-Day Notice was issued the Tenants have not paid rent for July 2024. The Landlord is seeking a Monetary Order in the amount of \$11,577.00 for unpaid rent that was due on June 10th, 2024, and July 10th, 2024.

The Tenants confirmed that they did not pay rent for the month of June 2024, and noted that based on the Two Month Notice, they believed they were entitled to withhold rent. The Tenants further confirmed that they have not paid rent for the month of July as they were waiting for the outcome of this hearing.

The Landlord amended their claim to include an application for a monetary order in the amount of \$261.80 for April utilities and \$35.96 for May utilities for a total of \$297.76. The Landlord submitted a breakdown of this claim as well as invoices from SSL-Sustainable Services Ltd. to support this claim.

The Tenants testified that they believe they have paid the utility bills that are owing.

Analysis

Are the Tenants entitled to more time to cancel the Landlords' Two Month Notice?

Section 49 of the Act authorizes a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 further states that upon receipt of a Two Month Notice, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the testimony of the parties, I find that while the Tenants are deemed to have received the Two Month Notice on April 30, 2024, five days after it was sent by registered mail based on section 90 of the Act, in this case, I accept that the Tenants did not receive the Two Month Notice until May 8, 2024. Having received the Two Month Notice on May 8, 2024, the Tenants had until May 23, 2024, to dispute the Two Month Notice.

In this case, the Tenants disputed the Two Month Notice on May 27, 2024, and applied for dispute resolution requesting more time to cancel the Two Month Notice. Section 66 of the Act provides that the director may extend a time limit established by the Act only in exceptional circumstances.

Residential Tenancy Branch Policy Guideline 36 describes exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I have considered the testimony of the Tenants and I find that their explanation as to why they failed to apply for cancellation of the Landlord's Two Month Notice within

fifteen days is not reasonable or compelling. For this reason, I do not accept that exceptional circumstances prevented the Tenants from disputing the Two Month Notice within 15 days after receiving it as is required by the Act.

For the above reasons, the Tenants' application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) and an extension of the time limit to dispute the Two Month Notice under sections 49 and 66 of the Act is dismissed, without leave to reapply.

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

If a tenant fails to comply with the 15-day deadline as I have found is the case here, section 49(9) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Section 55(2)(b) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

I have reviewed the Two Month Notice and find that it was issued to the Tenant in accordance with the Act and meets the form and content requirements of section 52 of the Act.

The Landlord submitted documentary evidence to support that they intend to occupy the rental unit for the purpose stated in the Two Month Notice.

Based on the foregoing, the Landlord is granted an order of possession that will be effective not later than seven (7) days after service of the order on the Tenants.

Are the Landlords entitled to an Order of Possession based on unpaid rent?

As I have previously granted the Landlords an order of possession based on the Two Month Notice, it is not necessary for me to consider the 10-Day Notice. The Landlords' application for an Order of Possession based on unpaid rent is dismissed without leave to reapply. I make no findings as to the merits of the 10-Day Notice.

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

The Landlords are seeking a monetary order in the amount of \$11,577.00 for unpaid rent which was not paid when it was due on June 10th, 2024, and July 10th, 2024, respectively. The Tenants do not dispute that they have not paid said rent but noted that based on the Two Month Notice they are entitled to compensation equivalent to one month's rent.

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.

The parties agree that the Tenants received a Two Month Notice.

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the foregoing, I find that the Tenants have a lawful right to deduct an amount that is equivalent to one month's rent payable under the tenancy agreement. On that basis, I authorize the Tenant's to withhold an amount that is equivalent to one month's rent.

The parties agree that rent due on June 10th, 2024, and July 10th, 2024, is outstanding, for a total of \$11,577.00. Based on my authorization to withhold one month's rent, I find that the Landlord has established a claim in the amount of \$5,788.50 for unpaid rent.

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 Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$5,788.50 as set out below.

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

The Landlords are seeking a Monetary Order for unpaid utilities in the amount of \$261.80 for the month of April and \$35.96 for the month of May.

The Landlords submitted copies the utility bills and a breakdown indicating that they have subtracted the cost of the heat pump according to the lease addendum.

The lease addendum is submitted into evidence and states:

- Hot water and Hydro – Tenants are responsible for Hot Water and Hydro for the property; the owner will pay the rental fee of the heat pump which is \$59.40/month.

In response to the Landlords' claim, the Tenants testified that they believe they paid the utility bills. The Tenants did not provide any records to support this.

Based on the foregoing, I find the Landlords have established a claim for unpaid utilities in the amount of \$297.76 for the months of April and June.

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 Order for unpaid utilities under section 67 of the Act, in the amount of \$297.76 as set out below.

Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

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

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$6,086.26** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,788.50
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	\$297.76

	Total Amount	\$6,086.26
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The Landlords are provided with this Order in the above terms. Should the Landlords wish to enforce this Order, the Tenants must be served with **this Order**. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia if equal to or less than \$35,000.00.

I grant an Order of Possession to the Landlord **effective seven (7) 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.

The Tenants' application is dismissed in its entirety without leave to reapply.

The Landlords' application for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act 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 Act.

Dated: July 24, 2024

Residential Tenancy Branch