



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, MNRT, RR, RP, PSF, LRE
 LL: OPR-DR, MNR-DR, OPU-DR, MNU-DR, FFL

Introduction

The Tenants' Application for Dispute Resolution was made on June 6, 2024 (the "Tenants' Application"). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice");
- a monetary order for emergency repairs;
- a rent reduction;
- an order for regular repairs;
- an order that the Landlord provide a service or facility; and
- an order restricting the Landlord's right to enter the rental unit.

The Landlord has made two Applications for Dispute Resolution. One was made on June 5, 2024 and the other on June 18, 2024 (the "Landlord's Applications"). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent and utilities;
- an order of possession for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on July 23, 2024 as a teleconference hearing. The Landlord's Agent attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 30 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent stated that they served the Tenant with the Proceeding Packages and evidence relating to the Applications by Registered Mail on June 21, 2024. The Landlord provided proof of service and well as the tracking information in support of the mailings. Pursuant to Section 89 and 90 of the Act, I find the Tenants are deemed served with the above-mentioned documents 5 days later, on June 26, 2024.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on July 23, 2024.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenants, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent and utilities, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent and utilities, pursuant to section 55 of the *Act*.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

I note that the parties had a previous Dispute Resolution Hearing where the Landlord was awarded a monetary order for unpaid rent and an order of possession dated February 26, 2024. The file number relating to this Decision is noted on the cover page of this Decision. At the start of the hearing, the Landlord's Agent stated that the Tenants paid the full amount of unpaid rent due according to the February 26, 2024 monetary order. As such, the Landlord did not pursue the Order of Possession and the parties agreed to continue the tenancy.

The Landlord's Agent stated that soon thereafter, the Tenants continued to fail paying rent and utilities, which led to the Landlord serving a new 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated May 7, 2024 (the "10 Day Notice"). The Landlord's Agent confirmed that there are no amounts being claimed in the current Applications that were previously claimed for in the February 26, 2024 Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Sections 55 and 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on July 1, 2023. The Tenants are required to pay rent in the amount of \$2,650.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,325.00 which the Landlord continues to hold. The Landlord's Agent stated that the Tenants were required to pay 85% of the utilities to the Landlord according to the tenancy agreement, however, given the Tenants' difficulties in paying utilities on time, the Landlord had agreed to reduce the amount owed to 50% of each utility bill. The Landlord provided a copy of the tenancy agreement in support.

The Landlord's Agent testified the Tenants did not pay rent when due for May 2024. The Landlord's Agent stated that she subsequently served the Tenants with a 10 Day Notice dated May 7, 2024 with an effective date of May 17, 2024 by posting it to the Tenants

door on May 7, 2024. The Landlord provided a proof of service and a copy of the 10 Day Notice in support.

The Landlord's Agent testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$2,650.00 for May 2024 rent. Furthermore, the 10 Day Notice indicates that the Tenants failed to pay utilities in the amount of \$2,696.52. The Landlord's Agent stated that the Tenants have not paid any amount towards the unpaid rent and utilities since the 10 Day Notice was served to the Tenants.

Furthermore, the Landlord's Agent state that the Tenants have failed to pay rent and utilities for June and July 2024 as well. Currently, the Landlord's Agent stated that the Tenants have an outstanding balance of rent in the amount of \$7,950.00, and an outstanding balance of utilities in the amount of \$2,834.92. The Landlord provided a detailed calculation of rent and utilities owed in support.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the 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 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent testified that she served the Tenants with a the 10 Day Notice by posting it to the Tenants' door on May 7, 2024. Pursuant to Section 88 and 90 of the Act, I find the 10 Day Notice is deemed served to the Tenants 3 days later, on May 10, 2024.

After receiving the 10 Day Notice, the Tenants made an Application to cancel the 10 Day Notice. As this is outside of the 5 day limitation period to dispute a notice to end tenancy, combined with the fact that no one attended the hearing for the Tenants, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenants have not paid the outstanding rent and utilities owed to the Landlord.

According to Section 55 of the Act: (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective seven (7) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of **\$7,950.00** and a monetary award for unpaid utilities in the amount of **\$2,834.92**.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I find that it was not necessary for the Landlord to submit a second Application, therefore, I decline to award reimbursement for the second filing fee.

The Landlord is holding the Tenants' security deposit in the amount of \$1,325.00. I find this deposit has accrued interest in the amount of \$33.12, bringing the total value of the

deposit held to \$1,358.12. I find it appropriate in the circumstances to order that the Landlord retain the \$1,358.12, security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$9,426.80, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$7,950.00
Unpaid Utilities:	2,834.92
<i>LESS</i> security deposit:	-(<i>\$1,358.12</i>)
TOTAL:	\$9,426.80

Conclusion

The Tenants have breached the *Act* by not paying rent and utilities when due to the Landlord. The Landlord is granted an order of possession, which will be effective seven (7) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$9,426.80. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 23, 2024

Residential Tenancy Branch