



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the Tenants: CNR

For the Landlord: OPR-DR, MNR-DR, LRSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the Landlord

The Landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End the Tenancy due to Unpaid Rent served to the Tenants
- a monetary order for unpaid rent
- authority to retain all or part of a Tenants' security deposit
- recovery of the filing fee

The Landlord and agent attended the hearing and were affirmed; the Tenants did not attend the hearing.

The Landlord's agent submitted documentary evidence and testimony showing that each Tenant was served with the Landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (proceeding package) by registered mail July 26, 2024. The tracking numbers and signed statements were provided in evidence.

Based upon the Landlord's and agent's oral and written submissions, I find the Tenants were served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the Landlord's application in the Tenant's absence.

Preliminary and Procedural Matters

Despite having their own hearing scheduled for 11:00 am on August 20, 2024, the Tenants failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent 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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the Tenants at the hearing, I order their application dismissed, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession of the rental unit and a monetary order for unpaid rent

Is the Landlord entitled to deduct the Tenants' security deposit from a monetary award granted to the Landlord and recovery of the filing fee?

Background and Evidence

The Landlord submitted the tenancy agreement showing a tenancy start date on January 1, 2024, monthly rent of \$1690, and a security deposit of \$845 paid to the Landlord on December 28, 2023.

Filed in evidence was a copy of the 10 Day Notice, which was dated July 15, 2024, listing an effective move-out date of July 27, 2024, and listing unpaid rent owed by the Tenants of \$3521.82 due on July 1, 2024. The Landlord submitted evidence that the 10 Day Notice was served on July 15, 2024, when it was attached to the Tenants' door.

The Landlord submitted that the Tenants did not pay the monthly rent listed or any rent since the Notice was served. The Landlord submitted that as of the day of the hearing, the Tenants owed an outstanding rent deficiency of \$5260.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the Tenants that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the Tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

In this case, the Tenants made an application to dispute the 10 Day Notice. I find it is reasonable to conclude that in the absence of the Tenants, that the Tenants are no longer disputing the Notice.

I find the Landlord submitted sufficient and undisputed evidence to prove that the Tenants were served a 10 Day Notice, that the Tenants owed the unpaid rent listed on the Notice, and did not pay the outstanding rent within five days of service, or at all.

Therefore, pursuant to section 55(1) of the Act, I find that the Landlord is entitled to, and I **grant** an order of possession for the rental unit effective **two (2) days** after service of

the order upon the Tenants. I have not granted an extended order of possession as the Tenants have not paid the monthly rent and have a large, outstanding rent deficiency.

Should the Tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The Tenants are **cautioned** that if they do not move out within two (2) days of being served, they may be responsible for paying **bailiff fees and court costs**.

Monetary order –

I find that the Landlord submitted sufficient, undisputed evidence to show that the Tenants owe an outstanding balance of **\$5260** in unpaid monthly rent, through the date of the hearing. I find the Landlord has established a monetary claim in that amount.

I also grant the Landlord recovery of their filing fee of **\$100** due to their successful application, for a total monetary award of **\$5360** to the Landlord.

To date, the Tenants' security deposit of \$845 has accumulated interest of \$14.70. At the Landlord's request, I direct the Landlord to deduct the security deposit and interest of \$859.70 in partial satisfaction of their monetary award of \$5360.

I grant the Landlord a monetary order for the amount of **\$4500.30** for the balance due.

Should the Tenants fail to pay the Landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The Tenants are **cautioned** that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants' application is dismissed without leave to reapply due to their failure to attend the hearing to present evidence in support of their own application and to respond to the Landlord's application.

The Landlord's application for an order of possession of the rental unit, and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

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: August 20, 2024

Residential Tenancy Branch