



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL, FFT / OPR-DR, MNR-DR

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants request the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46(4)(b) of the Act;
- An order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 49(8)(a) of the Act; and
- To recover the cost of the filing fee for their Application under section 72 of the Act.

The Landlords request the following:

- An Order of Possession after issuing the 10 Day Notice under section 55(2)(b) of the Act; and
- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;

Parties appeared for both the Landlord and the Tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding and Evidence

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the other's Application. The Landlords also confirmed receipt of the Tenants' request to amend their Application dated July 29, 2024 to dispute the 10 Day Notice. Given this, I find that each party was served with the Materials as required under section 89 of the Act.

The Tenants acknowledged receipt of the Landlords' evidence and confirmed they had sufficient opportunity to review it. Given this, I find the Landlords' evidence was served in accordance with section 88 of the Act.

The Tenants provided their evidence to the Residential Tenancy Branch in six separate installments between July 15, 2024 and August 21, 2024. The Tenants were unable to confirm how or when they served their evidence to the Landlords, or how many packages of evidence they provided to the Landlords.

Given the lack of clarity of the service of the Tenants' evidence I advised them during the hearing that if their evidence was to be admitted to consideration, they would have to refer me to the specific piece of evidence they wish to rely on so that I could confirm with the Landlords that this evidence was received. The Tenants did not refer me to any of their documentary evidence during the hearing. As such, none of the Tenants' documentary evidence was considered.

Issues to be Decided

- Are the Tenants entitled to an order cancelling the 10 Day Notice and the Two Month Notice?
- If not, are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Tenants entitled to recover the filing fee for their Application?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on December 1, 2023.
- Rent is \$3,100.00 per month due on the first day of the month.
- A security deposit of \$1,550.00 was paid by the Tenants which the Landlords still hold, though the tenancy agreement provides for a deposit of \$1,500.00.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenants still occupy the rental unit, the upper portion of a house, with the Landlords residing in the lower portion.

The tenancy agreement provides the tenancy is on “monthly term basis”. The Landlords indicated this meant a month-to-month basis. The Tenants acknowledged the provisions of the written agreement, but testified there had been a verbal agreement between the parties that the tenancy would be for a year, which was disputed by the Landlords.

Copies of the Notices were entered into evidence, both of which were on the approved form. The Two Month Notice is signed and dated July 14, 2024 and provides an effective date of September 15, 2024. The reason for ending the tenancy, per the Notice is the rental unit will be occupied by the landlord or the landlord’s spouse. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Two Month Notice should read September 30, 2024 instead of September 15, 2024.

The 10 Day Notice is signed and dated July 18, 2024 and provides an effective date of July 31, 2024. The reason for issuing the 10 Day Notice is given as failure to pay rent of \$1,550.00 due on July 1, 2024.

The Tenants acknowledged receipt of the Two Month Notice on July 14, 2024 when it was provided to them in person, and of the 10 Day Notice on July 18, 2024 after it was attached to the door of the rental unit.

The Landlords testified as follows. The tenancy was not intended to be long-term and they moved into the lower level of the residential property and rented out the upper portion due to financial reasons and stresses in their personal lives. They now intend to occupy the rental unit once again, so issued the Two Month Notice accordingly.

The Tenants paid only \$1,550.00 of the \$3,100.00 due on July 1, 2024 and promised to pay the remainder by July 17, 2024. The Tenants failed to pay off the arrears as

promised, so the 10 Day Notice was issued. The Tenants paid \$1,000.00 to the Landlords on July 18, 2024 but the remaining \$550.00 is still outstanding, as is the rent due on August 1, 2024 and September 1, 2024.

The Landlords take the position that as the Tenants did not dispute the 10 Day Notice in time or pay the outstanding rent within five days of receipt, they accepted the tenancy ended on July 31, 2024 and owe \$6,750.00 in unpaid rent as of September 1, 2024.

The Tenants testified as follows. They have been suffering financial hardship recently, with both of them losing their jobs and having no other sources of income. They are also waiting for a settlement from KV's former employer to come through.

They indicated their belief that JA will occupy the rental unit under the Two Month Notice, but stated they believe AD will not, as they mentioned studying abroad later this year.

The Tenants agreed with the Landlords' testimony relating to the rent payments and stated they had provided the entirety of SM's disability assistance income to the Landlords on July 18, 2024 and had no other funds to cover the remaining \$550.00 for the rent due July 1, 2024, and after that.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. There are limited circumstances where a tenant can deduct an amount from rent, which include when a tenant has received a Two Month Notice to End Tenancy for Landlord's Use of Property and they withhold the last month's rent under section 51(1) of the Act, and if the landlord provides authorization to do so.

The Landlords issued the Tenants with a Notice to End Tenancy under section 49(3) of the Act. This entitled the Tenants to receive from the Landlords 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, per section 51(1) of the Act. As set out in section 51(1.1) of the Act, in the above scenario, a tenant may withhold the amount authorized from the last month's rent.

The Tenants had not provided notice to end the tenancy before the effective date of the Two Month Notice, therefore they were entitled to withhold the rent due September 1,

2024, but not before this date. Given this, the Tenants were required to pay rent in full in when it was due on July 1, 2024 and August 1, 2024 per the tenancy agreement.

Per the undisputed testimony of the Landlords, I find the Tenants failed to pay rent in full on July 1, 2024. The Tenants' indicated they would pay the remainder of the amount owing by July 17, 2024, which the Landlords did not take issue with. Given this, the Tenants were entitled to rely on the Landlords representations and effectively pay the outstanding \$1,550.00 rent late by July 17, 2024, however, it was undisputed that they failed to do this.

The Tenants provided testimony regarding recent events in their personal lives which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenants and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Therefore, I find on a balance of probabilities that the 10 Day Notice was given for a valid reason. Further, I find the Tenants failed to pay the amount of rent owing in full, or dispute the 10 Day Notice within five days of receipt of the 10 Day Notice as the request to amend the Application was made on July 29, 2024. Had the full amount of outstanding rent been paid within five days of receiving the 10 Day Notice, it would have meant the notice has no effect in accordance with section 46(4)(a) of the Act. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

Based on the above findings, the Tenants' Application is dismissed without leave to reapply and the Landlords' Application is granted. The Landlords are entitled to an Order of Possession under section 55(1) of the Act. As the deemed effective date of the 10 Day Notice has passed, I grant the Landlords an Order of Possession effective September 30, 2024. The tenancy is ended under the 10 Day Notice, not the Two Month Notice, therefore, Tenants do not have the right to compensation of one month's rent under section 51(1) of the Act.

Since the Applications relate to a notice to end tenancy under section 46 of the Act, the Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$6,750.00 in unpaid rent to the Landlords.

In accordance with the offsetting provision of section 72 of the Act, the Landlords may retain the Tenants' security deposit of \$1,550.00, plus interest, as partial satisfaction of the payment order. Per section 4 of the *Residential Tenancy Regulation*, interest on

security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$31.84 using the Residential Tenancy Branch interest calculator using today's date.

As the Tenants were not successful in their Application, their request to recover the filing fee from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlords are issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenants as soon as possible. The Tenants must vacate the rental unit by 1:00 PM on September 30, 2024. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants as soon as possible. It is the Landlords' obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$6,750.00
Less: security deposit, plus interest	(\$1,581.84)
Total	5,168.16

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: September 12, 2024

Residential Tenancy Branch