



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding COASTWIDE MARINE SERVICES DBA GRANADA
INN and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes (T): CNR-MT
(L): OPR, MNRL-S, LRSD

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy issued for Unpaid Rent under sections 46 and 55 of the Act; and, an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

This hearing also concerned the Landlord's Application for Dispute Resolution under the Act for:

- 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 46 of the Act
- authorization to apply the Tenant's security deposit in partial satisfaction of unpaid rent under sections 67 and 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Tenants were deemed served the fifth day after the Landlord sent the proceeding package to the Tenants on September 19, 2023, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. The Tenants confirmed receipt of the Landlord's proceeding package.

Tenant E.J. stated she was uncertain whether the Notice of Hearing on the Tenants' application had been served to the Landlord. Tenant E.J. stated she provided the application to a Service BC Centre but stated she was computer illiterate and uncertain

whether the Notice of Hearing on the Tenants' application had been sent to the Landlord.

Service of Evidence

The Tenants submitted no documentary evidence for this proceeding. The Tenants confirmed receipt of the Landlord's evidence and an opportunity to review the evidence prior to the hearing.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession?

Is the Landlord entitled to an order for unpaid rent? Is the Landlord entitled to retain the Tenants' security deposit in partial satisfaction of the unpaid rent?

Background and Evidence

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

Evidence established this tenancy commenced May 1, 2021, on a month-to-month basis. The Tenants' monthly rent has remained at \$1,350.00 due on the first day of the month for the term of the tenancy. The Tenants provided a security deposit to the Landlord on April 30, 2021, in the amount of \$675.00, which the Landlord continues to hold in trust. A copy of the tenancy agreement was provided in evidence.

On September 3, 2024, the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent. The Notice provided the Tenants had an unpaid rent balance of \$100.00 due August 1, 2024; and, unpaid rent in the amount of \$725.00 due as of September 1, 2024. The effective date of the Notice was September 15, 2024. The Notice was served to the Tenants on September 4, 2024. Witness Landlord caretaker M.F. testified he hand-delivered the Notice on that date to Tenant E.J. and witness N.N. testified he saw M.F. deliver the Notice to Tenant E.J. A completed Proof of Service form signed by the witnesses was also provided in evidence.

Landlord A.X. testified the Tenants had paid \$1,250.00 toward August 2024 rent, but had not paid the outstanding balance of \$100.00. She stated she received a payment from the Ministry of Social Services in the amount of \$625.00 on September 1, 2024 for September 2024 rent, and further received an additional \$625.00 from the Tenants on September 27, 2024. Landlord A.X. stated that the Tenants had not paid the remaining balance of \$100.00 owing for September 2024 rent, and no rent had been paid for October 2024. Thus, the total unpaid rent as of the date of the hearing was \$1,550.00.

The Tenants did not dispute the unpaid rent. Tenant P.T. testified that Tenant E.J. had suffered several minor strokes and had been “in and out of hospital” as a result. Tenant E.J. stated she was illiterate and thus did not understand the Notice and was late in filing the application on September 10, 2024, to cancel the Notice. Tenant P.T. further testified they received ministry assistance for rent since May 2021 until approximately 11 months before the Notice was issued. Tenant P.T. said he was disabled, and when he reached retirement age financial assistance from the ministry ceased. He stated his pension was \$725.00 per month. Tenant P.T. had completed forms to request additional financial assistance but had not yet been approved. The Tenants stated they had no other source of funds. The Tenants raised concerns about the condition of the rental unit.

Landlord A.X. stated the Tenants had been repeatedly late in paying rent over the course of the prior 11 months. She stated she often contacted them to collect outstanding unpaid rent. Landlord A.X. stated she had “tried every way to get [them] to pay rent” before issuing the 10 Day Notice. The Landlord requested authorization to retain the security deposit in partial satisfaction of unpaid rent.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, should an order of possession be issued to the Landlord?

Is the Landlord entitled to an order for unpaid rent? Is the Landlord entitled to retain the Tenants' security deposit in partial satisfaction of the unpaid rent?

Section 46(1) of the Act states: “A landlord may end a tenancy if rent is unpaid on any day after the date 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.” Additionally, section 46(2) requires that the notice served by the landlord must comply with section 52 of the Act.

Section 66 of the Act provides an arbitrator may extend or modify a time limit established under the Act only in exceptional circumstances. Policy Guideline 36 defines “exceptional circumstance” as those circumstances beyond the applicant’s control and unexpected. An arbitrator is to consider various factors in evaluating whether an applicant’s delay was beyond the individual’s control and whether the applicant’s conduct contributed to the delay in meeting the deadline. In this case, I accept the Tenants’ testimony that Tenant E.J. had suffered several minor strokes diminishing her capacity and that her illiteracy may have contributed to filing the Tenants’ application one day late.

Section 55(1.1) of the Act provides that if a tenant makes an application for dispute resolution of a notice to end tenancy for unpaid rent under section 46, and the landlord’s

notice complies with section 52 of the Act, and the tenant's application is dismissed or the landlord's notice is upheld, then the director must grant an order for unpaid rent.

In this case it is uncontested the Tenants had unpaid rent for August and September, 2024, at the time the Notice was issued and have continued to incur unpaid rent for October, 2024. While it is unfortunate the Tenants' financial circumstances have changed, I find the Notice complies with section 52 of the Act and was properly issued by the Landlord for unpaid rent. I find the Landlord is entitled to an order of possession and has provided sufficient evidence to support a monetary order for unpaid rent in the amount of \$1,550.00.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenants' security deposit, together with accrued interest, in partial satisfaction of the Tenants' unpaid rent obligation.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$847.11** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 46	\$1,550.00
Less amount of Tenants' security deposit	-\$675.00
Less accrued interest on the Tenants' security deposit	-\$27.89
Total Amount	\$847.11

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 any occupant 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.

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

Dated: October 14, 2024

Residential Tenancy Branch