



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Tenants: CNR-MT
 For the Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear the applications regarding the above-noted tenancy.

The Tenants' application pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), under section 46; and
- an extension of the timeline for disputing the Notice, under section 66;

The Landlord's application pursuant to the Act is for:

- an order of possession under the Notice, under sections 46 and 55;
- a monetary order for unpaid rent, under section 26; and
- an authorization to recover the filing fee, under section 72.

Tenants DS (the Tenant) and AG and landlord XL (the Landlord) attended the hearing. All the parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service

The parties each confirmed receipt of the Notices of Dispute Resolution and the Evidence (the Materials) and that they had enough time to review them.

Based on the testimonies, I find that each party was served with the Materials in accordance with section 89(1) of the Act.

Preliminary Matters

At the hearing the Landlord sought to amend the application for \$1,800.00 in unpaid rent to include an additional \$1,800.00 for the unpaid rent for November 2024, as the tenancy is ongoing and when the Landlord submitted her application rent for November 2024 was not due yet.

Rule of Procedure 7.12 states: “An application can be amended at the hearing only in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.”

The increase in the Landlord’s monetary claim for unpaid rent should have been reasonably anticipated by the Tenants, as the tenancy is ongoing. Therefore, pursuant to section 7.12 of the Rules of Procedure and section 64 of the Act, I amend the monetary claim for unpaid rent to \$3,600.00.

Issues to be Decided

Are the Tenants entitled to:

- an extension of the timeline for disputing the Notice?
- cancellation of the Notice?

Is the Landlord entitled to:

- an order of possession?
- a monetary order for unpaid rent?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

Both parties agreed the tenancy started on July 5, 2024. Monthly rent is \$1,800.00, due on the first day of the month. The Landlord collected and holds a security deposit (the deposit) of \$900.00.

The Landlord, and the Tenants confirmed receipt of the Notice on October 16, 2024 in person.

The Tenants submitted their application on October 23, 2024 and continue to occupy the rental unit.

The Tenants affirmed they applied late because tenant DS had a stroke and was in the hospital from September 19 to 21, DS was in the hospital again from on October 18 to 19. Tenant AG affirmed that she could not submit the application earlier because she was helping DS and because their dog died around that time.

The parties submitted the Notice into evidence. It is dated October 16, 2024, the effective date is October 26 and indicates the Tenants failed to pay rent of \$1,800.00 due on October 1, 2024.

The Tenants affirmed they have not paid rent due in October and November 2024 due to financial difficulties.

The Landlord affirmed the Tenants currently owe her \$3,600.00 for rent due on October 1 and November 1, 2024 (\$1,800.00 x 2 months).

The Tenants affirmed they would like to have ample time to move out if an order of possession is granted, the rental unit is illegal and must be inspected and that the Landlord has a good financial condition.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Extension of time limit

Pursuant to section 46(4) of the Act, tenants must dispute notices to end tenancy for unpaid rent in 5 days.

I accept the uncontested testimony the Landlord served, and the Tenants received the Notice in person on October 16, 2024, in accordance with section 88(a) of the Act.

As the Tenants received the Notice on October 16, 2024 and applied on October 23, I find the Tenants disputed the Notice late.

Section 66(1) of the Act allows arbitrators to extend the time limit established by the Act only in exceptional circumstances.

Policy Guideline 36 states that one example of exceptional circumstances is if the party was in the hospital.

I accept the Tenants' uncontested and convincing testimony about their health problems. I find the Tenants had exceptional circumstances to apply late.

Thus, pursuant to section 66 of the Act, I extend the time limit to dispute the Notice.

Notice

The onus to prove the reasons for the Notice is on the Landlord, per Rule of Procedure 6.6.

Pursuant to section 46(1) of the Act, 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.

I accept the uncontested testimony that monthly rent is \$1,800.00, due on the first day of the month and the Tenants did not pay rent due on October 1 and November 1, 2024.

Based on the undisputed testimony and the Notice, I find the Tenants currently owe the Landlord \$3,600.00 for the unpaid rent of October and November 2024.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states the arbitrator may order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy.

As the Tenants are currently occupying the rental unit and did not pay the rent, I find the tenancy ends on the date of this decision, per section 68(2)(a) of the Act.

Section 55(1) of the Act states that if a notice to end tenancy that complies with section 52 of the Act is dismissed, the arbitrator must grant an order of possession to the tenants.

I am sympathetic for the Tenants' alleged financial difficulties, but, under the Act, financial difficulties, the condition of the rental unit, the Tenants' request for an inspection and the alleged Landlord's good financial condition are not reasons to not pay rent.

As the Tenants continue to occupy the rental unit and did not pay the full amount of rental arrears, I dismiss their application to cancel the Notice and award the Landlord an order of possession, per section 55(1) of the Act.

Policy Guideline 44 states an arbitrator may consider some factor to determine the effective date of an order of possession, such as: the point up to which the rent has been paid; the length of the tenancy.

Under the Act, order of possessions can be effective as early as 2 days after service. Policy guideline 44 states: "Effective dates for orders of possession in these circumstances have generally been set for seven days after the order is received."

In this matter, considering the tenancy started in July 2024, the Tenants have not paid rent since October 1, 2024, the Notice's effective date was October 26 and the Tenants have faced health issues, I find it reasonable to order the order of possession to be effective ten calendar days after service.

The Tenants may be liable for any costs the Landlord incurs to enforce the order of possession and must pay rent until the day they move out.

Unpaid rent

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Per section 26(1) of the Act, I award the Landlord \$3,600.00 in unpaid rent for October and November 2024.

Filing Fee and Deposit

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the Landlord to retain the \$900.00 Deposit in partial satisfaction of the monetary award.

In summary, I award the Landlord:

Item	Amount \$
Unpaid rent October and November 2024 (\$1,800.00 x 2)	3,600.00
Filing fee	100.00
Deposit (minus)	900.00
Total:	2,800.00

In summary, I award the Landlord \$2,800.00.

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective ten calendar days after service of this order on the Tenants by 1:00 PM. Should the Tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26, 67 and 72 of the Act, I award the Landlord 2,800.00. The Landlord is provided with this order in the above terms. Should the Tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Landlord must serve the Order of Possession and Monetary Orders in accordance with section 88 of the Act and observe the deeming provisions of section 90.

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: November 18, 2024

Residential Tenancy Branch