



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes T - CNC
 L – OPR, MNRL, LRSD, FFL

Introduction

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

- cancellation of a One Month Notice to End Tenancy;

and, 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 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlord attended the hearing.

Tenant K.A.S. and M.K. attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenants submitted no evidence for this proceeding other than a copy of the One Month Notice at issue in their application and a copy of the tenancy agreement.

The Landlord provided copies of the Canada Post registered mail tracking receipts for service of the proceeding package to each Tenant that he sent on January 16, 2024. The Landlord further provided tracking information from Canada Post as to attempted

deliveries of the package. Tenants M.M. and K.A.S. stated they did not have photo ID to pick-up the registered mail packages from Canada Post. Upon request from undersigned, the Landlord checked the application rental records for the Tenants and stated that he had on file copies of driver's licenses with photographs for Tenant M.M. and Tenant K.A.S. each bearing an expiration date in 2028. The Landlord had identification for Tenant M.K. but it did not have a photograph.

RTB communications information maintained by the Branch in regular course indicates that on January 17, 2025, Tenant M.K. contacted the RTB regarding the 10 Day Notice. Tenant M.K. testified the RTB emailed to him the Landlord's 10 Day Notice, together with copies of evidence submitted by the Landlord. Tenant M.K. stated he did not review the email. Tenant K.A.S. denied knowledge of the email from the RTB.

Nevertheless, Tenant M.K. stated he sent by regular mail (no tracking number) the Tenants' proceeding package to the Landlord. Tenant M.K. was uncertain of the date he mailed the package to the Landlord. The Landlord testified he received the package mailed by the Tenants, but that it contained copies of the documents he had submitted to the RTB in support of the Landlord's application and no Notice of Hearing regarding the Tenants' application.

I find each Tenant was deemed served the fifth day after the Landlord sent the proceeding package to the Tenant on January 16, 2025, 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 numbers for each package.

As discussed in greater detail below, I find the Tenants did not serve the Landlord with their proceeding package.

Preliminary Matters

Tenant K.A.S. stated at the outset of the hearing that at the end of December, 2024, Tenant M.M. had moved out. The Landlord stated he was unaware of that Tenant M.M. had vacated the unit.

Issues for Decision

Are the Tenants entitled to cancel the One Month Notice to End Tenancy?

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in satisfaction of the requested monetary award?

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Background and Evidence

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

Evidence establishes this tenancy began on December 3, 2024 for a fixed period to end on December 31, 2025, and thereafter to continue on a month-to-month basis. The Tenants' monthly rent of \$2,350.00, is due on the first day of the month. The Tenants provided to the Landlord a security deposit in the amount of \$1,175.00, which the Landlord continues to hold in trust. A copy of the tenancy agreement was provided in evidence.

On December 28, 2024, the Landlord issued a One Month Notice to End Tenancy for Cause. The effective date of the Notice was January 31, 2025. The Notice provided the Tenants had an unreasonable number of occupants in the unit and the Tenants had engaged in conduct that significantly interfered with, or unreasonably disturbed, other occupants. The specific basis for issuance as stated in the Notice was an allegation the Tenants had allowed additional occupants into the unit without the Landlord's consent and the Tenants had repeatedly disturbed other occupants in the rental property and neighbors with loud noises and disturbances. A copy of the Notice was provided in evidence.

The Landlord also provided in evidence email notices to the Tenants regarding the noise complaints he received from other tenants in the building. The Landlord explained these tenants were long-term residents and they had complained to him about the noise from the Tenants' unit starting from the date the Tenants moved in. The Landlord stated he had not received written warnings from the local bylaw officer who went to the rental property on complaints lodged by the other tenants. However, the Landlord stated, the bylaw officer contacted him two or three times to advise him of the noise complaints and on one occasion when the officer was threatened by one of the Tenants.

Tenant K.A.S. testified she was unaware of the bylaw officer coming to the rental unit to investigate noise complaints lodged by other tenants. She further stated she was unaware of the noise levels in the unit as she was at work when this occurred. She claimed Tenant M.M. was responsible for the noise. Tenant M.K. testified similarly as to being absent due to work when the noise disturbances occurred.

Regarding the unreasonable number of occupants, Tenant K.A.S. further testified her adult son and nephew were guests over the holiday but they were not occupants in the unit.

On January 2, 2025, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The effective date of the Notice was January 17, 2025. The Notice stated the Tenants had failed to pay rent in the amount of \$2,350.00 due on January 1, 2025. The Notice was served to the Tenants by Canada Post registered mail, the Landlord providing a copy of the Canada Post tracking information indicating the package was available for pick-up on January 8, 2025 after a delivery attempt had been made. In addition to a copy of the Notice, the Landlord provided a monetary worksheet for the unpaid rent, and copies of emails to the Tenants dated January 2, and January 3, 2025, advising that rent remained unpaid and that a Notice would issue.

The Tenants admitted that they have not paid rent for January 2025.

Analysis

Should the Landlord's One Month Notice be cancelled?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

The Tenants disputed this notice on January 2, 2025, and I further find the One Month Notice was served to the Tenants on December 28, 2024 as stated in the Tenants' application. I find the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find the Landlord has the burden to prove she had sufficient grounds to issue the One Month Notice. I find the Notice complies with section 52 of the Act.

However, the Tenants were obligated to provide notice of this dispute resolution hearing to the Landlord. The general instructions clearly set forth to an applicant in the Notice of Hearing the applicant's responsibility for service of the Notice of Hearing and other evidentiary documents to the other party.

Section 89(1) of the Act provides:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

In this case, the Tenants could not establish they had served the Landlord with the proceeding package at the time of the hearing. Even if the Tenant was able to prove he mailed the proceeding package to the Landlord (the Landlord testifying he only received from the Tenants the proceeding package he had served them with), service by regular mail is not an accepted means of service under section 89(1); rather, service by registered mail (which has a tracking number) is authorized by the Act.

Therefore, as the Tenants were unable to establish service of the proceeding package to the Landlord on their application to cancel the One Month Notice, I dismiss the Tenants' application related to the One Month Notice without leave to reapply, as the Tenant is now beyond all timelines to dispute this Notice.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

The Landlord served the 10 Day Notice to the Tenants by Canada Post registered mail on January 2, 2025. Canada Post tracking information provided by the Landlord indicates that it was available to the Tenants on January 8, 2025. I find the Tenants were deemed served with the 10 Day Notice on January 8, 2025. I find the 10 Day Notice issued by the Landlord on January 2, 2025, complies with section 52 of the Act.

Section 46 of the Act states that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find the 10 Day Notice was served to the Tenants on January 8, 2025 when made available to the Tenants by Canada Post. The Tenants had until January 13, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears. I find the Tenants, by their own admission, have not paid rent for January 2025.

Based on the evidence before me, I find the Tenants failed to pay the unpaid rent within five days of deemed receipt of the 10 Day Notice and did not apply for dispute resolution. In accordance with section 46(5) of the Act, due to the failure of the Tenants to take either of these actions within five days, I find the Tenants are conclusively presumed to have accepted the end of this tenancy on January 17, 2025, the effective date on the 10 Day Notice.

Therefore, I find that the Landlord is entitled to 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.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for January 2025, in the total amount of \$2,350.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$2,350.00.

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Section 72(2) of the Act provides that when the director orders a monetary award, "(b) in the case of payment from a tenant to a landlord, [payment may be had] from any security deposit or pet damage deposit due to the tenant."

Therefore, in accordance with section 72(2) of the Act, I authorize the Landlord to retain the Tenants' security deposit, with interest, and this amount be deducted from the amount of unpaid rent due to the Landlord.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was successful in his application, I find the Landlord is entitled to recover from the Tenants the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order on the Tenant(s)**. Should the Tenant(s) or anyone 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.

I grant the Landlord a Monetary Order in the amount of **\$1,271.57** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,350.00
authorization for the Landlord to retain the Tenants' security deposit plus accrued interest	-\$1,178.43
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1,271.57

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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

Dated: January 29, 2025

Residential Tenancy Branch