

DECISION

Introduction

This hearing was convened as a result of the parties' applications for dispute resolution under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- an order of possession based on a 10 day notice to end tenancy for unpaid rent or utilities dated February 19, 2025 (the "10 Day Notice") under sections 46 and 55 of the Act;
- compensation of \$2,600.00 for unpaid rent under section 67 of the Act; and
- authorization to recover the Landlord's filing fee from the Tenants under section 72 of the Act.

The Tenants applied for an order that the tenancy has ended due to a frustrated tenancy agreement under sections 62(3) and 92 of the Act.

The Landlord's representative SB and the Tenants attended this hearing. All attendees gave affirmed testimony.

Preliminary Matters

Service of Notice of Dispute Resolution Proceeding and Evidence

The Tenants confirmed receipt of the Landlord's notice of dispute resolution proceeding and initial evidence.

The Landlord submitted late evidence consisting of an order of possession of the suite below the rental unit, as well as documents left by the BC SPCA on the door of the rental unit. The Tenants acknowledged receipt of the BC SPCA documents, though not from the Landlord. I find the Tenants to be sufficiently served with the BC SPCA documents under section 71(2)(c) of the Act. I find the Tenants had not received a copy of the order of possession, and as such I have considered the Landlord's testimony in lieu of referring to this document.

The Landlord acknowledged receipt of the Tenants' notice of dispute resolution proceeding and evidence, minus the tenancy agreement. I find the Landlord also submitted a copy of the tenancy agreement, so I find the Landlord to be sufficiently served.

Amendment of Style of Cause

The Tenants' application initially named SB as the landlord and respondent. I find the landlord named on the parties' tenancy agreement is the corporate Landlord. Therefore, pursuant to section 64(3)(c) of the Act, I have amended the Tenants' application to replace SB with the Landlord as the respondent, to unify the style of cause across both applications.

Amendment of Landlord's Claim

In the Landlord's application, the Landlord claimed unpaid February rent of \$2,600.00. The Landlord also stated: "if they don't move out immediately then I want to include March rent as well in the above amount of \$2600.00. It means they will owe me a total of \$5200.00 for February and March rent."

Under Rule 7.12 of the Rules of Procedure, an application can be amended at the hearing 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.

Based on the Landlord's application, I find the Tenants can reasonably anticipate the Landlord to claim compensation for March as well. Therefore, pursuant to Rule 7.12 of the Rules of Procedure, I allow the Landlord to amend their claim from \$2,600.00 to \$5,200.00 to include compensation for overholding in March 2025.

Issues to be Decided

Are the Tenants entitled to an order that the tenancy has ended due to a frustrated tenancy agreement?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to compensation for unpaid rent and overholding?

Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

The rental unit is the upper suite of a house. This tenancy commenced on August 1, 2023, and was to be for a fixed term ending on July 30, 2025. The rent was \$2,600.00 due on the first day of each month. The Tenants paid a security and pet damage deposit of \$1,300.00 each.

On February 19, 2025, the Landlord served the Tenants the 10 Day Notice with an effective date of March 1, 2025. This notice states that the Tenants failed to pay rent of \$2,600.00 due on February 1, 2025. The Landlord posted a copy of the 10 Day Notice to the Tenants' door on February 19, 2025. The Tenants acknowledged receipt.

The Landlord received two payments of \$564.00 on March 1 and 5, 2025 respectively, paid for by a society on behalf of the Tenants.

The Tenants testified that they told SB rent would be paid on February 20, 2025, as they had a ministry payment coming in, but the Landlord still served the 10 Day Notice.

The Tenants testified that on February 24, 2025, there was a confrontation between the parties, which involved SB following the Tenants around town. The Tenants testified that they moved into a hotel on February 24, 2025 and stayed there until March 24, 2025. The Tenants confirmed that they secured a new place for March 28, 2025 and have just moved in. The Tenants acknowledged that they have not yet returned the rental unit keys to the Landlord.

SB testified that the Tenants never informed him they had left. SB testified that the Tenants kept their dog in the rental unit until March 21, 2025, when the dog was removed by the BC SPCA. The Tenants denied that their dog was abandoned. According to the Tenants, they went to the rental unit daily to feed their dog.

The Tenants testified that they were unable to stay in the rental unit with their child due to the basement tenants, who were doing drugs and were in possession of weapons. The Tenant testified that on February 7, 2025, the house was raided by the RCMP. Because the basement is not a legal suite, the Tenants were assumed to be part of the incident. The Tenants provided news articles regarding the raid. The Tenants also described other issues, such as plumbing and electrical repairs, insufficient garbage bins causing garbage to be piled up, and issues with bylaw. The Tenants provided a letter from the city dated February 15, 2025, which warned that the property could receive an excessive nuisance property designation. The Tenants submit that they consider the tenancy to be frustrated as of February 7, 2025.

SB testified that he picked up the garbage when the Tenants complained, and resolved a drain issue to make sure the plumbing does not leak. SB testified that the house is an older home, so plugging too many things in would cause the breaker to trip. SB testified that the Landlord obtained the order of possession for the basement suite on March 3, 2025, and the basement tenants moved out on March 14, 2025. SB testified that he texted the Tenants when he was sure the basement tenants had left, but he was unsure whether the Tenants had changed their phone numbers or their phones were not working.

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. The onus to prove their case is on the person making the claim.

Are the Tenants entitled to an order that the tenancy has ended due to a frustrated tenancy agreement?

Under section 92 of the Act, the *Frustrated Contract Act* and the doctrine of frustration of contract apply to tenancy agreements.

As explained in Residential Tenancy Policy Guideline 34, a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned.

Based on the evidence presented, I do not find the parties' tenancy agreement was frustrated. I find that although the property was raided by the police on February 7, 2025, the Tenants were not removed from or denied access to the rental unit. I do not find the evidence to suggest that the rental unit was damaged or rendered uninhabitable. I find the Tenants continued residing in the rental unit until February 24, 2025. Furthermore, I accept the Landlord's testimony that he obtained an order of possession for the basement suite on March 3, 2025, and the basement tenants moved out in mid-March. Under these circumstances, I do not find that it would have been impossible for the parties to perform their obligations under the tenancy agreement or for the tenancy to continue.

Accordingly, I dismiss the Tenants' application for an order that the tenancy ended due to a frustrated tenancy agreement without leave to re-apply.

Is the Landlord entitled to an order of possession?

I find the Tenants have made it unequivocally clear that they have already moved out of the rental unit and into a new home. As such, I find the Tenants are no longer in possession of or overholding in the rental unit, and the Landlord is entitled to repossess the rental unit immediately. Therefore, I do not find it is necessary to grant the Landlord an order of possession of the rental unit, which would require the Landlord to serve the order on the Tenants and wait before re-taking possession.

I note that under section 37(2)(b) of the Act, a tenant must give the landlord all keys in their possession or control upon vacating a rental unit. If the Tenants do not comply with this requirement, the Landlord is at liberty to claim compensation for any loss that results from this non-compliance.

Is the Landlord entitled to compensation for unpaid rent and overholding?

Under section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a 10 day notice to end tenancy for unpaid rent.

I find the 10 Day Notice given by the Landlord complies with the requirements of section 52 of the Act in form and content. I find the Tenants were served with a copy of the 10 Day Notice on February 19, 2025 in accordance with section 88(g) of the Act, and were deemed to have received it on the third day after attaching to their door, or February 22, 2025, in accordance with section 90(c) of the Act.

I find the Tenants did not pay the overdue February rent in full to the Landlord within 5 days, that is by February 27, 2025, to cancel the 10 Day Notice under section 46(4)(a) of the Act. I find the Tenants also did not apply to dispute the 10 Day Notice.

In light of the above, I find the Tenants are conclusively presumed to have accepted that this tenancy ended on the corrected effective date of the 10 Day Notice, or March 4, 2025 (per sections 46(1) and 53(1) of the Act).

I find the Tenants did not apply for compensation or a rent reduction through the Residential Tenancy Branch for any issues experienced during the tenancy. Based on the evidence presented, I do not find the Tenants had a legal right under the Act to withhold payment of February rent to the Landlord.

Furthermore, I find the Tenants' dog remained in the rental unit until March 21, 2025, prior to removal by the BC SPCA, and the Tenants' evidence was that they went to the rental unit daily to feed their dog. Therefore, I consider the rental unit was used and occupied by the Tenants until March 21, 2025, after the tenancy had legally ended.

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. This includes compensation for the use and occupancy of the rental unit on a daily basis (see Residential Tenancy Policy Guideline 3).

Given the above, I find the Landlord is entitled to compensation of \$2,600.00 for unpaid February rent, less the partial payments received, plus 21 days of use and occupancy in March, or $\$2,600.00 - \$564.00 - \$564.00 + \$2,600.00 \times 21/31 \text{ days} = \$3,233.29$.

Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in their application. I find the Landlord is entitled to recover their filing fee from the Tenants under section 72(1) of the Act.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

Pursuant to sections 67 and 72(1) of the Act, I grant the Landlord a Monetary Order of **\$3,333.29**, calculated as follows:

Item	Amount
Balance of Unpaid February 2025 Rent (\$2,600.00 - \$564.00 - \$564.00)	\$1,472.00
Use and Occupancy (March 1 to 21, 2025) (\$2,600.00 × 21/31 days)	\$1,761.29
Filing Fee	\$100.00
Total Monetary Order for Landlord	\$3,333.29

The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, the Landlord is authorized to deduct from the security and pet damage deposits under section 72(2)(b) of the Act to satisfy this Order. Alternatively, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

The Landlord's claim for an order of possession is dismissed as the Tenants have already vacated the rental unit.

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: April 3, 2025

Residential Tenancy Branch