



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAHROKHI INVESTMENT INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants: CNR, CNL, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a tenancy.

The Tenants applied for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, dated June 25, 2021 (the 10 Day Notice);
- an order to cancel a Two Month Notice to End Tenancy For Landlord's Use of Property, dated May 26, 2021 (the Two Month Notice) and;
- authorization to recover the filing fee from the Landlord.

The Landlord applied for:

- an order of possession for the rental unit, based on the issuance of the 10 Day Notice;
- a monetary order for unpaid rent; and;
- authorization to recover the filing fee from the Tenants.

The Landlord and Tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenants testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord in person, on an unknown date. The Landlord confirmed receipt of same. I find the Tenants served the NDRP and evidence on the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their NDRP and evidence on the Tenants by leaving it at the door of the rental unit on July 24, 2021. The Tenants confirmed receipt of same. I find the Landlord sufficiently served the NDRP and evidence on the Tenants in accordance with section 71(2)(b) of the Act.

Issues to be Decided

1. Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession and a monetary order due to non-payment of rent?
2. Should the Two Month Notice be cancelled? If not, is the Landlord entitled to an order of possession for their use of the property?
3. Are the Tenants entitled to recover their filing fee from the Landlord?
4. Is the Landlord entitled to recover their filing fee from the Tenants?

Background and Evidence

The parties agreed on the following particulars of the tenancy. The tenancy agreement describes a fixed-term tenancy for the period from September 15, 2020 to September 30, 2021. The rent is \$3,550.00, due on the first of the month. The Tenants paid a security deposit of \$1775.00 and a pet deposit of \$200.00, which the Landlord still holds.

The Landlord submitted a copy of the tenancy agreement and addendum as evidence. I noted that the address referenced on the addendum was not the same as the subject of the hearing; the Landlord indicated it was the address of the agent who prepared the addendum.

The Landlord submitted a copy of the 10 Day Notice as evidence. The Landlord testified they served the 10 Day Notice on the Tenants by posting it on the door of the rental unit on June 25, 2021; the Tenants confirmed receiving it the same day.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$3,550.00, due June 1, 2021.

The Landlord testified the Tenants have also not paid rent for the following months of 2021: July, August, September, October. The Landlord submitted as evidence a 2021

bank statement showing a payment from the Tenants for \$3550.00 in August that was returned due to insufficient funds, a stopped payment for \$3550.00 in July, and a stopped payment for \$3550.00 in June.

Regarding the Landlord's testimony on the unpaid rent, the Tenants stated that during the fixed term period of the tenancy, "the owner" knocked on the door of the rental unit, and asked the Tenants to leave, so the owner could move his child into the unit.

The Tenants further testified that the rental unit was not in good condition when they moved in, and they had made improvements to the unit at their own expense. The Tenants did not provide any evidence in support of changes they made to the unit.

The Tenants acknowledged they had not paid rent for June to October, 2021.

Analysis

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

Based on the evidence before me, and on a balance of probabilities, I make the following findings:

I find that the tenancy agreement requires the Tenants to pay the Landlord rent of \$3,550.00 each month.

I find that the Landlord served the Tenants the 10 Day Notice by posting it on the door of the rental unit on June 25, 2021, and in accordance with section 88 of the Act. I find that the 10 Day Notice meets the form and content requirements of section 52.

I accept the Landlord's affirmed testimony, confirmed by the Tenants, that the Tenants did not pay the rent owing under the tenancy agreement for the five months of June to October, 2021. There is no evidence before me that the Tenants had a legal right to withhold payment of rent.

I find that the Landlord is entitled to an order of possession.

I find the Tenants owe the Landlord unpaid rent totalling \$17,750.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in their application, I order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I grant the Landlord a monetary award of \$17,850.00. In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$1975.00 of the Tenants' security and pet deposits in satisfaction of this monetary award.

The security and pet deposits for this tenancy are reduced by \$1975.00 to \$0.00.

As the tenancy has ended, I dismiss Tenants' application to dispute the Two Month Notice.

Conclusion

The Tenants' application is dismissed.

The Landlord's application is granted.

I hereby grant the Landlord an order of possession, which must be served on the Tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the Landlord a monetary order for \$15,875.00, the remaining amount owed by the Tenants to the Landlord.

This decision is made 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 28, 2021