



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This participatory hearing was convened after the issuance of a January 31, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter.

The landlord's agent, C.J., attended the hearing as did both tenants. The parties were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was sent via email on December 8, 2021. Pursuant to sections 89 & 90 of the *Act*, the tenants are deemed served with this Notice on December 11, 2021.

On January 14, 2021 the landlord served the tenants with an application for dispute resolution, along with their evidentiary package. These documents were sent via Canada Post Registered Mail. I find the tenants were served on January 19, 2021 in accordance with sections 88 and 89 of the *Act*.

No evidence was submitted by the tenants.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent? Can the landlord recover the filing fee?

Background and Evidence

The landlord confirmed this tenancy began on September 17, 2021. Rent is \$4,300.00 per month while security and pet deposits of \$2,250.00 each were paid at the outset of the tenancy and continue to be held by the landlord.

On December 8, 2021 the landlord served the tenants with a 10 Day Notice citing unpaid rent of \$4,300.00. The tenants did not dispute this notice. On January 4, 2022 the landlord applied for an Order of Possession by way of Direct Request proceedings. Both the landlord and the tenants agree the amount listed on the 10 Day Notice was paid. The landlord said payments were received in “dribs and drabs” while explaining half rent was paid for January 2022 while no rent was paid for February 2022.

The tenants disputed the landlord’s version of events and argued all outstanding rent had been paid, saying they were “up to date” with December 2021 and January/February 2022 after rent paid by way of certified cheque on February 25, 2022.

The tenants said they had spoken to the owner of the property and had been instructed to pay the owner directly. The tenants argued that multiple e-transfers had been sent to the property managers named in the dispute and that none of these transfers had been successfully deposited. The tenants argued that the property was in a very poor condition, with numerous dangerous items present in the home.

The landlord provided contradictory evidence to that of the tenants. The landlord testified that they had been instructed by the property’s owner to proceed with the hearing and to seek an Order of Possession.

Both parties alleged to have emails from the owner of the property supporting their respective positions, however, neither party produced these emails in evidence.

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy issued on December 11, 2021 (deemed received date). The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants’ failure to take either of these actions within five days has led to the end of the tenancy

on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 21, 2021. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants and will be effective two days after its service. If the tenants do not vacate the rental unit after service of this document, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants provided no documentation to support their arguments that they had reached an alternative arrangement with the owner related to the 10 Day Notice, nor did the tenants supply any documentation or correspondence between themselves or the owner to support their argument that rent was to be paid directly to the owner and enforcement of the 10 Day Notice was no longer being sought. No evidence of returned e-transfers was provided by the tenants to support their position that rent payments were rejected or not received by the landlord.

The tenants provided detailed reasons why rent was not paid, specifically that the home failed to meet safety standards and had numerous shortcomings.

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (2 Month Notice to End Tenancy);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withhold rent

I find that the tenants provided no evidence why rent could have been withheld under the *Act*. Section 26(1) of the *Act* states, "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." Further, while some arguments were made related to alleged safety issues and repairs, I find no evidence was provided by the tenants to support a

withholding of rent as described by sections 33(3) & (5) of the *Act*. For these reasons, I uphold the landlord's application for an Order of Possession.

The landlord has also applied for a monetary award related to unpaid rent. The 10 Day Notice contained a figure of \$4,300.00 related to unpaid December rent. The landlord confirmed this amount was paid, however, submitted that \$7,900.00 remained outstanding for February 2022 and half of January 2022's rent.

I find the application before me was not amended to reflect these new amounts of outstanding rent. The landlords testified that the figure cited on the December 8, 2021 was paid in full and was no longer outstanding. I therefore decline to award the landlord a monetary award related to unpaid December 2021 rent.

As the landlord was partially successful in their application, they may recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenants. If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia

The landlord may withhold \$100.00 from the tenants' security deposit in full satisfaction or a return of the filing fee.

The landlord's application for a monetary award is dismissed without leave to reapply.

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: March 1, 2022