



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Live Furnished
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL, OPC, MNDCL
LRE, LAT, CNR-MT, CNC-MT, FFT

Introduction

The tenants dispute two notices to end tenancy, along with additional relief, pursuant to the *Residential Tenancy Act* ("Act"). By way of cross-application the landlord seeks to end the tenancy based on those notices and seeks compensation for unpaid rent.

An arbitration hearing was held on April 1, 2022 at 9:30 AM. Only two representatives for the landlord attended the hearing, which ended at 9:47 AM.

Preliminary Issue: Tenants' Non-Attendance and Application

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. As neither tenant attended the hearing, they have not proven any of their claims, nor have they provided any legal defense in respect of the two notices to end tenancy. Therefore, the tenants' application is dismissed without leave to reapply.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The landlord representatives gave evidence, under oath, that monthly rent is \$4,000.00. Rent is due on the first day of the month. The tenants paid a security deposit of \$2,000.00. A copy of the written tenancy agreement was in evidence.

The landlord issued two 10 Day Notices to End Tenancy for Unpaid Rent (the “Notices”) on December 4, 2021 by email and another on January 4, 2022 by registered mail. Copies of both Notices were in evidence, along with proof of service evidence. The landlord testified that the parties had conducted most of their correspondence by way of email, and as such the landlord was fairly certain that service by email would be permissible. (It is my finding that service of the first Notice by e-mail was permitted under section 43(2) of the *Residential Tenancy Regulation*.)

Both Notices indicated that rent was not paid on the first day of the relevant months. The landlord representatives testified that as of March 31, 2022 the tenants owe rent arrears in the amount of \$16,000.00, \$400.00 in eight months’ worth of \$50.00-per-month late fees (as per the tenancy agreement), and \$200.00 in four months’ worth of \$50.00 per transaction NSF fees, for a total of \$16,600.00. In addition, the landlord seeks \$100.00 to pay for their application filing fee.

Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full. If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice (section 46(5) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, the landlord issued two Notices under section 46 of the Act. I have reviewed the Notices and find that they both comply with the form and content requirements set out in section 52 of the Act.

The tenants did not dispute the Notices within the required timeline and as such are presumed to have accepted the Notices. As such, taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance

of probabilities that the landlord has met the onus of establishing that they are entitled to an order of possession pursuant to section 55(2)(b) of the Act. Further, the undisputed evidence persuades me to find that the landlord is entitled to compensation in the amount of \$16,600.00 for unpaid rent, for NSF charges, and for late fees.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, they are granted \$100.00 to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy is now ended, I authorize the landlord to retain the tenants’ security deposit of \$2,000.00 in partial satisfaction of the above-noted award.

Both an order of possession and a monetary order (in the amount of \$14,700.00) are issued to the landlord, in conjunction with this decision. The landlord must serve copies of both orders upon each of the two tenants.

Conclusion

The landlord’s application is granted.

The tenants’ application is dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party’s right to appeal the decision is limited to review grounds provided under section 79 of the Act, or, by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: April 1, 2022

Residential Tenancy Branch