



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenants: CNR-MT, CNL, OLC, RP, PSF, MNDCT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlords’ 2 Month Notice to End Tenancy for Landlord’s Use of Property (“ 2 Month Notice”), pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order for the landlord to provide services or facilities required by law pursuant to section 65; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 11:10 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing as scheduled, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail on January 29, 2022. The landlord provided the tracking number in the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on February 3, 2022, 5 days after mailing.

The landlord testified that the tenants were served with a 10 Day Notice for unpaid rent dated January 2, 2022 by way of email, and by posting the 10 Day Notice on their door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on January 5, 2022, 3 days after posting.

Although the landlord had applied for a Monetary Order of \$725.00 in their initial claim, since they applied another \$2,175.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute

Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$725.00 to \$2,900.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified to the following facts. This fixed term tenancy began on September 1, 2015, and continued on a month to month basis after August 31, 2016. The monthly rent is currently set at \$725.00. The landlord testified that no security deposit was paid for this tenancy.

The landlord served the tenants with a 10 Day Notice to End Tenancy on January 2, 2022 for failing to pay the January 2022 rent. The landlord testified that the tenants have not paid any rent since the 10 Day Notice was issued. The landlord testified that the home was condemned on April 3, 2022.

The landlord applied for an Order of Possession as well as recovery of the unpaid rent for January through to April 2022 as well as recovery of the filing fee.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, and as the effective date of the 10 Day Notice has passed, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants if they have not vacated the rental unit. If the tenants have not, or if they do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided sworn testimony that the tenants failed to pay the rent in the amount of \$2,900.00. Accordingly, I find that the landlord is entitled to \$2,900.00 in arrears for the above period.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants.

Conclusion

I dismiss the tenants' entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenants 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 issue a \$3,000.00 Monetary Order in favour of the landlord for recovery of the filing fee and unpaid rent. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 13, 2022

Residential Tenancy Branch