



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: **CNR, RP, OLC, LRE**
Landlords: **OPR-DR, MNR-DR, FFL, MNDCL, MNDL-S**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act.

This hearing also dealt with the Landlords' application pursuant to the Act for:

1. An Order of Possession for 10 Day Notice pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
4. An Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy - holding security and/or pet damage deposit pursuant to Section 38 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DH, and the Tenant, KM, and Legal Advocate, LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on April 2, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on April 5, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on April 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant uploaded the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on April 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that she served the Tenants with the Notice of Dispute Resolution Proceeding package for this hearing on April 22, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord uploaded the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package-OP/MN five days after mailing them, on April 27, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that she served the Tenants with her evidence by Canada Post registered mail on July 5, 2022. The Landlord referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Landlord's evidence was deemed served on the Tenants on July 10, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matters

Tenants vacated

The Tenant testified at the outset of the hearing that they vacated the rental unit on July 15, 2022. The Tenant stated that their claims in their dispute resolution application are no longer applicable, and she was no longer pursuing them. I find that the Tenant's application is dismissed without leave to re-apply.

Monetary Amount

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, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's request to amend their original application from \$1,500.00 to \$6,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

The Landlord no longer requires an Order of Possession for unpaid rent.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. Is the Landlord entitled to an Order for compensation for a monetary loss or other money owed?
3. Is the Landlord entitled to an Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy - holding security and/or pet damage deposit?
4. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on March 15, 2022. Monthly rent is \$1,500.00 payable on the first day of each month. A security deposit of \$750.00, and a pet damage deposit of \$750.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,500.00 in outstanding rent on April 1, 2022. The effective date of the 10 Day Notice was April 12, 2022.

The Landlord testified that the Tenants did not pay rent for April, May, June or July 2022. The Landlord stated she knew that the Tenants had moved out, but they never provided her with any notice.

The Tenant argued that the ant infestation in the rental unit was everywhere, and was the reason they stopped paying rent. The Tenant testified that she neither had the Landlord's permission to withhold rent nor an Arbitrator's Order authorizing her to withhold rent.

The Landlord stated part of her application was for damages in the rental unit. She said the Tenants were smoking on the property and she did not know if there was damage inside the rental unit. The Landlord did not upload documentary evidence of damage inside the rental unit or any expenses attached to that damage.

The Landlord is seeking a Monetary Order for unpaid rent in the amount of \$6,000.00.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It 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.* (emphasis mine)

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) *pay the overdue rent, in which case the notice has no effect, or*
- (b) *dispute the notice by making an application for dispute resolution.*
- ...

The Tenants were deemed served with the 10 Day Notice on April 5, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied to dispute the 10 Day Notice on April 2, 2022 which is within five days after receiving the notice.

The Tenants stopped paying rent when they encountered a pest issue in the rental unit. The Tenants were required to pay rent pursuant to Section 26(1) of the Act when it was due whether or not the Landlords complied with the Act, regulations or tenancy agreement. The Tenants did not have authorization, from the Landlord or an Arbitrator, to withhold rent from the Landlord. I find the Landlords' 10 Day Notice is valid and I uphold the Landlords' notice.

I must consider if the Landlords are entitled to a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I previously found that the Landlords' 10 Day Notice complied with Section 52 of the Act. As the Tenants have vacated the rental unit, the Landlords no longer require an Order of Possession.

The Landlords are entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$6,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlords' original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlords are authorized to retain the security and pet damage deposits held by the Landlords in partial satisfaction of the monetary award. Since the Landlords were successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$6,000.00
Less security deposit:	-\$750.00
Less pet damage deposit:	-\$750.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$4,600.00

The Landlords' claims for compensation were premature as the tenancy had not ended before making these claims. Due to the lack of evidence, I dismiss the Landlord's remaining claims with leave to re-apply.

Conclusion

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

I grant a Monetary Order to the Landlord in the amount of \$4,600.00. 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 of British Columbia 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 Act.

Dated: July 22, 2022

Residential Tenancy Branch