



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310077862: CNR, RP, AAT, PSF, OLC

File #310080065: OPR-DR, MNR-DR, FFL

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on July 5, 2022 (the “10-Day Notice”);
- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to ss. 30 and 62 to allow the Tenants or their guests access to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities; and
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

The landlords file their own application in which she seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- an order pursuant to s. 67 for unpaid rent; and
- return of their filing fee pursuant to s. 72.

The landlords application was filed as a direct request but was scheduled to a participatory hearing in light of the Tenants’ application.

K.K. appeared as the Landlord. The Tenants did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 11:15 AM without participation of the Tenants.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord acknowledged receipt of the Tenants' application without objection. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Tenants' application was sufficiently served on the Landlord.

The Landlord testified that her Notice of Dispute Resolution was personally served on the Tenants, though cannot recall the specific date it was served. She says that it was done sometime in August 2022. Based on the undisputed testimony of the Landlord, I find that her Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*.

Preliminary Issue – The Parties' Evidence

The Landlord testified that she did not serve any of the evidence she provided to the Residential Tenancy Branch on the Tenants. The Landlord further denied receiving any evidence from the Tenants.

The Rules of Procedure, particularly Rules 3.1, 3.14, and 3.15, requires participants in dispute hearings to serve evidence upon which they intend to rely on the other side. In this case, the Landlord both acknowledges that she did not serve her evidence and received none in response.

As a matter of practical consideration, I note that both sides have provided copies of the tenancy agreement and the 10-Day Notice. Based on the nature of this dispute, I accept that they both have these documents in their possession. Accordingly, despite neither side serving these documents, I see no prejudice to either side to include and consider these two documents.

The balance of the parties' evidence, as it was not served, shall not be included, nor will it be considered by me as to do so would be procedurally unfair.

Preliminary Issue - Tenants' Application

The Tenants' application contains relief in which they bear the onus of proving (ss. 32, 27, 30, 62, and 70) and in which the Landlord bears the burden of proving (s. 46). This can be seen by reference to Rule 6.6 of the Rules of Procedure.

As the Tenants failed to attend the hearing for their own application, I find that they have failed to discharge the evidentiary burden of proving their claims. Accordingly, I dismiss the following claims without leave to reapply:

- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to ss. 30 and 62 to allow the Tenants or their guests access to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities; and
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

As the Landlord bears the burden of proving the 10-Day Notice was issued in accordance with the *Act*, I shall consider this portion of the Tenants' application.

Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) Are the landlords entitled to an order of possession?
- 3) Are the landlords entitled to an order for unpaid rent?
- 4) Are the landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties which have been admitted into record. However, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on September 1, 2021.
- Rent of \$2,375.00 is due on the first day of each month.
- The landlords hold a security deposit of \$1,187.50 and a pet damage deposit of \$500.00 in trust for the Tenants.

A copy of the tenancy agreement was provided to me by the parties in their applications.

The Landlord testified that the 10-Day Notice was personally served on the Tenants on July 5, 2022. Both parties provided a copy of the 10-Day Notice to the Residential Tenancy Branch.

The Landlord further testified that the Tenants failed to pay rent at all from May 1, 2022 to date. The Landlord further confirmed that the Tenants continue to reside within the rental unit.

Analysis

The Tenants seek an order cancelling the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

I accept the Landlords undisputed evidence that the 10-Day Notice was personally served on the Tenants on July 5, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and was received on July 5, 2022.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application on July 6, 2022 such that it was filed within the 5 days permitted to them under s. 46(4) of the *Act*. The conclusive presumption under s. 46(5) of the *Act* does not apply.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

In the present instance, I accept the Landlord's undisputed evidence that rent has not been paid at all since from May 1, 2022 onwards. In other words, the Tenants failed to pay rent as per the tenancy agreement and failed to pay the arrears within 5-days of receiving the 10-Day Notice as per s. 46(4) of the *Act*. Based on the Landlord's testimony, I find that the 10-Day Notice was properly issued such that it is enforceable. Accordingly, I dismiss the Tenants application to cancel the 10-Day Notice.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. Pursuant to Tenants' application, the landlords' application and in consideration that the Tenants continue to reside within the rental unit, I find that the landlords are entitled to an order of possession.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline #3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, as has occurred here, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*.

As the Tenants were unsuccessful in disputing the 10-Day Notice and pursuant to s. 68(2) of the *Act*, I find that the tenancy ended on today's date. Both pursuant to ss. 55(1.1) and 67 of the *Act*, I find that the Landlord is entitled to an order for unpaid rent totalling \$16,625.00 (\$2,375.00 x 7 months (May to Nov 2022)).

Conclusion

Those aspects in which the Tenants bore the onus of proving their claims, namely their claims under ss. 32 (repairs), 30/62 (allow access to the rental unit), 27/62 (landlord

provide services or facilities), and 62 (landlord comply) of the *Act*, are dismissed without leave to reapply.

The Landlord has satisfied me that the 10-Day Notice was properly issued and is enforceable. The Tenants' application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the landlords within **two (2) days** of receiving the order of possession.

The landlords are entitled to an order for unpaid rent pursuant to ss. 55(1.1) and 67 of the *Act* totalling **\$16,625.00**.

I find that the landlords were successful in their application. Accordingly, I order pursuant to s. 72(1) of the *Act* that the Tenants pay the landlords' **\$100.00** filing fee.

It is the landlords' obligation to serve the order of possession and monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the landlords with the Supreme 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 *Residential Tenancy Act*.

Dated: November 24, 2022

Residential Tenancy Branch