



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) C.S., S.H.	910076790	CNR, MNDCT, RR, RP, AAT, LRE, LAT, FFT
(Landlord) G.G., H.G.	910083881	OPR-DR, MNR-DR, FFL
G.G., C.G.	910077573	OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied for:

- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent dated August 18, 2022 ("10 Day Notice");
- a monetary order of \$8,873.00 for damage or compensation under the Act;
- an Order to reduce the rent by \$200.00 for repairs, services or facilities agreed upon, but not provided;
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order to allow access for the Tenant or their guests;
- to suspend or restrict the Landlord's right to enter;
- for authorization for the Tenant to change the lock; and
- recovery of their \$100.00 Application filing fee.

The Landlords applied for:

- an order of possession for unpaid rent, further to having served - 10 Day Notice;
- a monetary order of \$1,475.00 for outstanding unpaid rent from the Tenant; and

- recovery of their \$100.00 application filing fee.

The Tenant, C.S., the Landlord, and an advocate for the Landlord, B.B. (“Advocate”), appeared at the teleconference hearing and gave affirmed testimony, although, the Tenant was approximately 15 minutes late calling into the hearing, as he said his cell phone needed recharging first.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenants with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on September 22, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. The Tenant acknowledged receipt of the Landlord’s documents. However, the Landlord said that while he did receive the Notice of Hearing from the Tenants, he did not receive any of the Tenants’ evidence in what they served him. As such, I advised the Parties that I it would not be administratively fair or compliant with the Rules for me to consider the Tenants’ evidence. However, I advised the Tenant that his testimony in the hearing was evidence before me.

Preliminary and Procedural Matters

The Tenant provided the Parties’ email addresses in his application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

In the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated

disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the application, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on their application are sufficiently related to be determined during this one-hour proceeding. I, therefore, only considered the Tenants' request to set aside the 10 Day Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of their application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2021, as the Tenants had a prior landlord before the current Landlord purchased the residential property on September 30, 2021. The Parties agreed that the tenancy agreement requires the Tenants to pay the Landlord a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated August 18, 2022, and which has the rental unit address. The 10 Day Notice was served via registered mail on August 18, 2022, and the Landlord provided a Canada Post tracking number as evidence of that service. The 10 Day Notice had an effective

vacancy date of September 3, 2022, and it was served on the ground that the Tenant failed to pay the Landlord \$3,100.00 in rent when it was due on August 1, 2022.

In the hearing, the Landlord directed me to his evidence of interact bank statements beginning in September 2021 and going through to August 2022. The Landlord pointed out that no rent had been paid by the Tenants in March, April or May 2022, and that the Landlord had applied for dispute resolution, but mistakenly thought he would be called by the arbitrator, instead of having to calling in; therefore, the Landlord missed this hearing. As such, the Landlord had to reapply.

The Landlord's bank statements indicate that the Tenants did not pay rent in March, April, or May 2022, and that they have not caught up in these amounts owing to the Landlord since then.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
March 1, 2022	\$1,600.00	\$0.00	(\$75.00)
April 1, 2022	\$1,600.00	\$0.00	\$1,525.00
May 1, 2022	\$1,600.00	\$0.00	\$3,125.00
June 1, 2022	\$1,600.00	0.00	\$4,725.00
June 14, 2022	\$1,600.00	\$1,625.00	\$3,100.00
June 25, 2022	\$1,600.00	\$1,625.00	\$1,475.00
July 1, 2022	\$1,600.00	\$0.00	\$3,075.00
July 31, 2022	\$1,600.00	\$1,575.00	\$1,500.00
Aug 1, 2022	\$1,600.00	\$0.00	\$3,100.00
	TOTAL OWING		\$3,100.00

In the hearing, the Landlord said that the Tenant has paid rent in full for September through November, although, the Landlord said he accepted these payments for "use and occupancy" only. The Tenant did not deny the Landlord's evidence in this regard.

The Tenant said that he told the Landlord that the rent would be late, and he accused the Landlord of harassing him and his partner, but he did not deny the amount owing in unpaid rent.

Analysis

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were properly served with the 10 Day Notice on August 23, 2022, five days after it was sent to them by registered mail.

The Tenant did not testify as to why the rent was not paid, and he did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$3,100.00 in rent owed as of August 2022. Therefore, I dismiss the Tenants’ Application to cancel the 10 Day Notice without leave to reapply.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenants have not paid full rent owing as of August 1, 2022, I award the Landlord with an **Order of Possession effective two days after service** of the Order on the Tenants.

Further, based on the evidence before me, I find that the Landlord is successful in his application for compensation, as I find that the Tenants breached sections 26 of the Act by not paying the rent owing to the Landlord on August 1, 2022. As such, I **award the Landlord** with **\$3,100.00** from the Tenants, pursuant to sections 26 and 67 of the Act. As the Landlord is successful in his application, I also award the Landlord with recovery of his **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants’ **\$800.00** security deposit in partial satisfaction of the Landlord’s monetary awards. The Landlord is authorized to retain the Tenants’ security damage

deposit, and he is awarded a **Monetary Order** of **\$2,400.00** from the Tenants for the remaining amount of the awards outstanding, pursuant to section 67 of the Act.

Conclusion

The Tenants have not paid the full rent owing to the Landlord, and therefore, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenants other claims are dismissed with leave to reapply, except for the request for repairs to the unit, and to allow access for the Tenant or their guests; to suspend or restrict the Landlord's right to enter; for authorization for the Tenant to change the lock; and recovery of their \$100.00 Application filing fee. These claims are dismissed without leave to reapply, since the tenancy has ended.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of possession** effective **two days after service of this order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this order as soon as possible. Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also awarded **\$3,100.00** in unpaid rent from the Tenants, as well as recovery of his **\$100.00** Application filing fee. The Landlord is authorized to retain the Tenants' **\$800.00** security deposit in partial satisfaction of these awards. The Landlord is granted a **Monetary Order** of **\$2,400.00** from the Tenants for the remainder of the monetary awards owing. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) 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 14, 2022

Residential Tenancy Branch