



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP

Introduction

The Tenants applied for dispute resolution (“Application”) and seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking an order for repairs to be made to the rental unit under section 32 of the Act.

The Landlord, M.P., and the Tenants, K.M. and S.M., attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

K.M. testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on March 9, 2023 via email. The Landlord confirmed receipt of the Materials but stated the Tenants’ supporting evidence was not provided to them. K.M. stated that the Tenants’ evidence was not attached to their email. I find that pursuant to sections 89 and 90 of the Act that the Tenant’s Materials were sufficiently served to the Landlord. However, as rule 3.14 of the *Rules of Procedure* states that evidence must be served on the respondents not less than 14 days before the hearing and as the Tenants’ evidence was not served on the Landlord, I exclude it from consideration in accordance with rule 3.17 of the *Rules of Procedure*.

The Landlord testified that they served their evidence onto the Tenants via email on April 13, 2023. The Tenants confirmed receipt of the Landlord’s evidence. I find that pursuant to sections 89 and 90 of the Act that Landlord’s evidence was sufficiently served to the Tenants.

Preliminary Issue: Severing

The Tenants applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenants, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

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, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Both parties agreed that the tenancy started on May 1, 2022 and that monthly rent is \$1,450.00 due on the first day of the month. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were paid by the Tenants, which the Landlord still holds. A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence by the Landlord. The Tenants still occupy the rental unit.

The Landlord testified there had been frequent late payments of rent throughout the tenancy and rental arrears had been accrued. The parties had agreed that the arrears of \$800.00 could be paid off by the Tenants paying \$200.00 per month in addition to the usual \$1,450.00 per month for rent for the next four months, starting on March 1, 2023. I was referred to an email exchange between the parties on February 16, 2023 which had been entered into evidence by the Landlord where the payment agreement was made.

The Landlord stated that when the first payment under the agreement was not made on March 1, 2023, they chased the Tenants up regarding this. They received a message that said they would be able to pay by the coming Friday which was two days time. The Landlord confirmed that they served the Notice dated March 4, 2023 onto the Tenants when the payment was not made.

A copy of the Notice was entered into evidence by the Landlord. The Notice is signed March 4, 2023 and provides outstanding rent of \$800.00 and an effective date of March 15, 2023. The Notice and the Tenants' Application indicate the Notice was served in-person.

The Landlord testified that the total arrears, as of April 1, 2023, is \$400.00 and a further \$425.00 in late fees is owed by the Tenants. They stated they seek an Order of Possession and want an end to the tenancy.

S.M. testified that rent had never been intentionally paid late but they had faced complications in getting cheques mailed to them. There had also been unforeseen expenses incurred by the Tenants. They agreed with the Landlord's testimony that there had been an agreement via email to pay back the arrears and that the payment due March 1, 2023 was late. They stated that rent was paid on time for a few months and that they do not agree with the figure concerning the late fees. They stated they did not think late payments were much of an issue.

K.M. provided a list of payments that had been made and reiterated that personal circumstances had caused issues with making rent payments.

The Landlord referred me to text conversations between the parties regarding late payment of rent and the fact that late fees are expected. They also referred me to copies of the financial ledgers recording rent payments for 2022 and 2023 which show a total of nine late payments for rent and clarified that the figure of \$425.00 was an error and that the correct figure in respect of late fees being owed is \$225.00.

I was also referred to receipts entered into evidence by the Landlord which indicated that payments received after the Notice was issued and after five days since the Tenants received the Notice were for "use and occupancy only".

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*, if the landlord gives authorization to not pay rent, or as ordered by the Director.

The Tenants put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amount of \$800.00 was due on March 1, 2023.

The Tenants provided testimony regarding events in their personal lives which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenants, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's testimony show that the Tenants did not pay the full amount of rent due on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenants' Application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenants do not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 15, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenants are ordered to pay \$625.00 in unpaid rent to the Landlord. The Landlord confirmed the balance is made up partially of late fees. I note the Tenancy Agreement at paragraph 10 provides for a charge of \$25.00 per late payment which is in accordance with section 7 of the *Residential Tenancy Regulation*. Based on the testimony from both parties and the evidence put forward by the Landlord, specifically the financial ledgers, I find that there were nine late payments throughout the tenancy and therefore that the Landlord is entitled to recover \$225.00 from the Tenants in respect of late fees.

The Landlord testified that they retain a security deposit of \$725.00. Under section 38(4)(b) of the Act, the Landlord is ordered to retain \$625.00 from the security deposit in full satisfaction of the Payment Order and as a result, no Monetary Order is issued.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession.

The Landlord is authorized to retain \$625.00 from the security deposit.

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: April 25, 2023

Residential Tenancy Branch