



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant application: CNR, FF
Landlord application: OPR, MNR, FF

Introduction

This hearing convened as the result of the cross applications (applications) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord and recovery of the cost of the filing fee.

The landlord applied for an order of possession of the rental unit pursuant to the Notice served to the tenant, a monetary order for unpaid rent, and recovery of the cost of the filing fee.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me. The parties confirmed receiving each other's applications. The tenant confirmed receiving the landlord's evidence and the tenant said they did not serve their evidence to the landlord. The tenant's evidence was excluded as a result of not complying with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) as all evidence must be served to the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and recovery of the cost of the filing fee?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation from the tenants, and recovery of the cost of the filing fee?

Background and Evidence

The landlord filed a written tenancy agreement showing a month-to-month tenancy start date of September 15, 2022, monthly rent of \$2,000, due on the 1st day of the month starting October 2022, and a security deposit of \$1,000 being paid by the tenants to the landlord. Filed into evidence is a copy of the written tenancy agreement.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord confirmed that on December 6, 2022, the tenants were served the Notice, by personal delivery, listing unpaid rent of \$2,000 owed as of December 1, 2022. The effective vacancy date listed on the Notice was December 17, 2022. Filed into evidence was a copy of the Notice. The landlord also served the tenants two more 10 Day Notices, for the unpaid rent for January and February 2023.

The landlord asserted that since the issuance of the Notice on December 6, 2022, the tenants have not paid any rent and that they now owe unpaid monthly rent of \$2,000 for December 2022, and January, February, March and April 2023, each. The landlord did point out that there was no hydro to the rental unit from March 6 through April 13, 2023, but that the tenant stayed in the rental unit. The landlord's evidence showed the tenant's car exploded, causing the power outage.

Tenant's response-

In response, the tenant said they withheld the rent payments from December through the present due to the landlord not providing windows that would open, as promised.

The tenant submitted that they did not stay in the rental unit during the power outage, explaining that they were there during the day for their dogs, but spent nights at a hotel.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

Order of possession of the rental unit –

Under section 26 of the Act, 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.

When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act. In this case, the undisputed evidence is the tenant failed to pay the rent due on December 1, 2022, and has not paid any rent since.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

While the tenants filed an application for dispute resolution in dispute of the Notice, they confirmed the landlord's evidence that they had not paid the monthly rent listed on the Notice or any monthly rent since that date. The tenant did not provide evidence they had a legal right under the Act to withhold the monthly rent.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to, and I grant an **order of possession** for the rental unit **effective 2 days** after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenants.

Monetary order –

I find that the landlord submitted sufficient and undisputed evidence to show that the tenants owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month since.

I find it appropriate to amend the landlord's monetary claim of \$4,000 to include the unpaid rent through the date of the hearing.

I therefore find the landlord is entitled to a monetary award of **\$10,000**, comprised of unpaid rent of \$10,000 for the months of December 2022 and January, February, March, and April 2023, each, and the **\$100** filing fee paid by the landlord for their successful application.

I have not taken into account whether the tenant remained in the rental unit during the power outage. The tenant did not provide a notice to vacate and used the rental unit during the day, according to the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$10,100**.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement are recoverable from the tenants.

Tenant's application-

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the Notice, **without leave to reapply**.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 20, 2023

Residential Tenancy Branch