



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlords: OPR-DR MNRL-DR FFL
For the tenant: CNR OLC LRE AAT

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act).

The landlord applied for the following:

1. Order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 18, 2022 (10 Day Notice),
2. Monetary order for unpaid rent of \$9,592,
3. Filing fee

The tenants applied for the following:

1. Cancel 10 Day Notice,
2. Order directing landlord to comply with the Act, Regulation or tenancy agreement,
3. Order to suspend or set conditions on the landlord's right to enter the rental unit,
4. Order to allow tenants or their guest to access unit.

The parties the teleconference hearing and were affirmed. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions. The parties were permitted to present testimony and their documentary evidence.

The tenants failed to serve any documentary evidence for either application. The tenants confirmed that they were served with the landlord's documentary evidence and had the opportunity to review that evidence.

I have reviewed all 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

The tenants' filing fee was waived for their application already.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession?
- Is the landlord entitled to a monetary order, and if so, how much?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on April 1, 2022. Monthly rent is \$1,900 and due on the first day of each month.

A copy of the 10 Day Notice was submitted in evidence. The tenants write in their application that they received the 10 Day Notice on November 18, 2022, however the registered mail tracking numbers RN 673 904 860 CA and RN 673 904 856 CA confirm that the tenants signed for and accepted the 10 Day Notices on November 21, 2022. The tenants did not file their application to dispute the 10 Day Notice until November 29, 2022, which is the date their filing fee waiver was granted.

The tenants were asked why they waited so long to file their dispute and tenant BO confirmed that it was due to someone else helping them and that they do not know what took that person so long to submit the application.

The agent referred to an authorization submitted in evidence confirming that they had the authority to represent the landlord at the hearing. The agent testified that as of the date of the hearing, the tenants owe \$18,992 in unpaid rent as follows:

1. April 2022, \$900 paid, \$1,000 rent owing,
2. May 2022 rent paid in full,
3. June 2022, \$1,375 paid, \$522 rent owing,
4. July 2022, \$1,540 cash paid, total arrears owing for rent \$1,892,
5. August 2022 no rent paid,
6. September 2022 no rent paid,
7. October 2022 no rent paid,
8. November 2022 no rent paid,
9. December 2022 no rent paid,
10. January 2023 no rent paid,
11. February 2023 no rent paid,
12. March 2023 no rent paid,
13. April 2023 no rent paid.

Tenant BO testified that they paid cash on the first day of each month but submitted no documentary evidence such as bank withdrawal receipts, or bank ledgers in support of their testimony.

The landlord is seeking an order of possession as soon as possible, a monetary order for all unpaid rent owed, and the filing fee. The agent confirmed the landlord does not want to offset any amount owing with the security deposit in case of damages.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Section 46 of the Act only allows the tenants 5 days to dispute the 10 Day Notice. I find the tenants failed to file their application within 5 days of November 21, 2022, as they waited until Tuesday, November 29, 2022 to file their application. Section 46(5) of the Act applies and states:

46(5) **If a tenant** who has received a notice under this section **does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**

(a) **is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

(b) **must vacate the rental unit to which the notice relates by that date.**

[emphasis added]

Given the above, I find the tenants are conclusively presumed to have accepted the 10 Day Notice.

In addition, had the tenants disputed the 10 Day Notice under the Act in time, which they did not, the onus of proof is on the tenants to provide sufficient evidence that rent was paid. In fact, page two of the 10 Day Notice reinforces this by indicating to the tenants that the Notice may be disputed for specific reasons such as proof rent was paid, etc. In the matter before me, **the tenants failed to submit any supporting documentary evidence to support their testimony of rent being paid in cash.** Therefore, based on the consistent testimony of the agent, I find the 10 Day Notice is valid and having reviewed the 10 Day Notice, I find it complies with section 52 of the Act. Therefore, I dismiss the tenant's application in full due to insufficient evidence, and due to conclusive presumption as indicated above.

Furthermore, I find the landlords have met the burden of proof with specific testimony as to the exact amount of rent owing. Therefore, I grant the landlords **\$18,992** in rent arrears as indicated above. I find the tenants breached section 26 of the Act, which requires that monthly rent of \$1,900 be paid on the first day of each month.

Under section 72 of the Act, I also grant the landlord the **\$100** filing fee, which brings the total monetary claim established by the landlord to **\$19,092.**

Order of Possession – The effective vacancy date of the 10 Day Notice was November 29, 2022. The effective vacancy date of the 10 Day Notice has passed, the tenants continue to occupy the rental unit. Pursuant to section 55 of the Act, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on November 29, 2022.

Conclusion

The tenants' application is dismissed, without leave to reapply.

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court. The tenancy ended November 29, 2022.

The landlord has been granted a monetary order in the amount of \$19,092. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlords only for service on the tenants.

I caution the tenants that they can be held liable for all costs related to the enforcement of the order of possession and monetary order, including but not limited to, court fees and bailiff fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 4, 2023

Residential Tenancy Branch