



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, RR, PSF, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- cancellation of the landlord's 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46 of the Act
- for an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- for an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord RY and tenants MS and CF appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the 10 Day Notice dated November 2, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?

2. Are the tenants entitled to an order requiring the landlord to provide services or facilities as required by the tenancy agreement or law?
3. Are the tenants entitled to a rent reduction due to the landlord's failure to provide facilities or services agreed upon but not provided?
4. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on June 1, 2021 on a month to month basis. Rent was \$2,295.00 per month due on the first of the month. The landlord took a security deposit of \$1,147.50 and holds that amount in trust for the tenants. The tenants still occupy the rental unit.

The landlord testified that there was a roof top deck provided with the rental unit. However, the roof started leaking and needed to be repaired. During the repairs, it was determined that the deck was rotten, a safety hazard, and initially built without permits, therefore it was not replaced. During the construction the landlord testified that she reduced the tenants' rent to \$1,515.00 per month during the construction to compensate the tenants for loss of access to the rooftop deck, loss of parking and construction noise. She testified that the rent reduction was only for the duration of construction. The landlord provided text messages sent to the tenants explaining the rent reduction. Construction was complete October 5, 2022.

As the tenants no longer had the deck as outlined in the tenancy agreement, the landlord served the tenants with RTB 24, Notice Restricting or Terminating a Service or Facility. The Notice was dated August 19, 2022 but was provided to the tenants August 29, 2022. In that notice the landlord stated that she would reduce rent to \$2,000.00 per month due to the loss of the rooftop patio. The RTB form was provided in evidence. As construction was completed October 5, 2022 the tenants were required to pay \$2,000.00 in rent for November. The tenants paid \$1,515.00 for November 2022. The outstanding rent was \$485.00, and the landlord then served the 10 Day Notice.

The tenants testified that they had an agreement with the landlord to pay the \$1,515.00 per month shown in the text messages sent from the landlord. As that was the last rent agreed upon between the parties, the tenants submitted that was the rent they were required to pay. The tenants further testified that a reduction of \$295.00 per month in rent was not adequate compensation for the loss of the deck. They tried to negotiate the rent with the landlord and proposed paying \$1,700.00 per month and then \$1,800.00 per month. The landlord did not respond. The tenants provided an email in evidence dated October 28, 2022 stating that they would pay \$1,515.00 in rent for November but

were open to negotiating. The tenants believed that they did not have an agreement on rent, other than the agreement in June 2022 to pay \$1,515.00 per month. The tenants paid \$1,515.00 for November 2022 rent.

Upon questioning, the tenants stated that they believed that the \$2,000.00 per month rent was an unlawful rent increase and therefore they were entitled to withhold \$485.00.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenants.

The tenants dispute that they did not pay full rent for the month of November 2022 because the last agreement regarding rent was in June 2022 and was for \$1,515.00. The landlord provided the text message regarding the agreement:

Wed, Jun 22 at 12:45 PM

Hi Matt, my understanding is that you will be paying \$1514.7 (66% of \$2295) for July rental payment. \$ 780.30 (34% of \$2295) is the compensation for parking, loss of access to rooftop, and the constant noise during the construction. We are not sure if the construction will be completed after a month. For August, you will be paying the full amount of \$2295. I will provide you the compensation based on the completion date. For example, if the repair is completed on August 7th ($\$2295 / 31 = \74.03 = rent per day), I will be paying you \$176.19 for compensation.($\$74.03 \times 7 = \518.21 , 34% of \$518.21 = \$176.19)
Please let me know if you have any questions on this matter.
Thank you

I find that the text message from the landlord clearly communicated to the tenants that the rent reduction she offered was temporary and was only offered during the construction period. Once construction was complete the landlord was no longer offering a rent reduction to \$1,515.00 per month. The landlord properly served the tenant with RTB 24 on August 29, 2022 notifying them that they would not longer have a rooftop deck. A rent reduction from the original rent of \$2,295 to \$2,000.00 per month was given to the tenants.

Under the Act there are only six reasons a tenant can lawfully withhold rent:

1. The security deposit taken was more than one half of the monthly rent pursuant to section 19
2. The tenants received a notice to end tenancy pursuant to section 49
3. An arbitrator previously issued an order allowing the tenants to withhold rent pursuant to section 65
4. The landlord consented to the tenants withholding rent
5. The tenant paid for emergency repairs to the rental unit pursuant to section 33
6. There was an unlawful rent increase pursuant to section 43

The tenants claimed that the landlord's notice that rent was going to be \$2,000.00 per month constituted an illegal rent increase. I find that it does not as the tenancy agreement specified that the rent was \$2,295.00 per month. The landlord temporarily reduced rent significantly during the construction period to compensate the tenants for the inconvenience. The reason for the rent reduction and the fact that it was temporary was clearly communicated to the tenants.

The landlord compensated the tenants for the loss of the rooftop deck by reducing their rent by almost \$300.00 per month. If the tenants did not agree with the amount of rent reduction, they should have filed an application for dispute resolution and sought a determination of the proper amount of the rent reduction. They were required to pay the rent as set by the landlord. They failed to do so. The tenants' application disputing the 10 Day Notice is dismissed.

I find that the 10 Day Notice complies with section 52 of the Act and is therefore valid. The landlord has established that the tenants failed to pay rent in the amount of \$485.00 due on November 1, 2022. The landlord is entitled to an order of possession for the rental unit.

As I have found that the 10 Day Notice complies with section 52 of the Act and I have dismissed the tenants' application, section 55(1.1) requires me to issue an order to the landlord for unpaid rent. I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$485.00.

As the tenancy is ending, I find it unnecessary to decide the tenants' remaining claims. The tenants' application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$485.00 in recovery of the unpaid rent. The monetary order must be served on the tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 5, 2023

Residential Tenancy Branch