



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, RPP, OLC, FFT

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”).
2. an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1) of the Act;
3. an order requiring the landlords to return the tenant’s personal property pursuant to section 65 of the Act;
4. an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act; and
5. authorization to recover the filing fee for this application from the landlords pursuant to section 72 of the Act.

GS and SF (the “tenants”) appeared at the hearing. TP appeared as agent for the landlord.

The tenants testified that they served the landlords with the Notice of Dispute Resolution Proceeding and TP acknowledged receipt of the same. TP testified that they were not served with the tenants’ evidence. The tenants confirmed that they did not provide a copy of their evidence to the landlord.

Rule 3.1 of the Rules of Procedure required that the applicant serve the respondent with their evidence. Rule 3.5 requires that the applicant be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with their evidence. In the case, the applicant tenants did not serve the respondent landlords with their

evidence. As a result, the tenant's documentary evidence has not been considered for the purposes of rendering a decision in this matter.

TP testified that they served the tenants with their evidence in response to the tenants' applications by registered mail on April 19, 2023. In support of this, TP submitted a Canada Post Receipt dated April 19, 2023, containing a Canada Post Tracking Number.

The tenants testified that while they agree the landlords sent them a package of evidence by registered mail, they were unable to pick up the package from the post office because the package was incorrectly addressed and indicated one tenant's first name and the other tenant's last name.

I have considered the tenants evidence with respect to the registered mail package; however, I find the tenants have provided no evidence to support that they attempted to pick up the registered mail package and were unable to do so, rather, they suggested that they believe they would not be able to pick up the registered mail package based on the discrepancy in their names. I find it unlikely that the tenants would not have obtained the package had they made any attempt to do so.

Importantly, Residential Tenancy Policy Guideline 12 -Service Provisions states the following at Page 13:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision.

Based on the foregoing, I find and in accordance with section 88 and 90 of the Act that the required documents were served on the tenants on April 19, 2023, and are deemed to have been received by the tenants on April 24, 2023, the fifth day after they were sent by registered mail.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

TP testified that SK and AK are the owners and landlords of the property. The tenants did not dispute TP's evidence on this point. Pursuant to section 64(3)(c) of the Act, I amend the tenants' application to include AK as a landlord.

Issue(s) to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an Order of Possession and Monetary Order for unpaid rent?
3. Are the tenants entitled to an order requiring the landlords to return their personal property?
4. Are the tenants entitled to an order requiring the landlords to comply with the Act, regulation or tenancy agreement?
5. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below.

TP testified to the following details of the tenancy. The tenancy began on May 1, 2021. Rent is currently \$2,500.00 a month payable on the first day of the month. The landlord's collected a security deposit in the amount of \$625.00 during a previous tenancy with the tenants at a different property. TP testified that the security deposit was transferred from the previous tenancy to the current tenancy. The landlords continue to hold the security deposit in trust.

The tenants testified that it is difficult to know what the current rent amount is because they never signed a Tenancy Agreement. The tenants' testified that they were initially involved in a "Rent to Own Agreement"; however, they were written out of that agreement because they got Covid. The tenants' testified that they never signed a Residential Tenancy Agreement for this property, and they believe the only agreement they signed was the Rent to Own Agreement.

TP directed my attention to the Residential Tenancy Agreement in evidence, which is dated May 1, 2021, and appears to contain signatures of both tenants. TP directed my attention to the Rent to Own Agreement which is also submitted into evidence and noted that the signatures of the tenants listed there are the same as the signatures listed on the Residential Tenancy Agreement.

TP submitted that the tenants' rental arrears started in Jan 2022. He testified that from January 1, 2022, to March 1, 2023, the total rent that was due was \$37,500.00; however, the actual rent paid was \$22,950.00. TP directed my attention to the document titled Rent Overview which is submitted into evidence. When the 10-Day Notice was issued, rent was outstanding in the amount of \$14,500.00. Since that time, the tenant's have not paid rent for April or May 2023 bringing the total rental arrears to \$19,550.00.

The tenants' testified that they do not dispute the amount of rent owing. The tenants described concerns they had with the actions and behaviours of the landlords indicating that the landlords came to the property any time they wanted and entered without providing proper notice. Further, they indicated that they lost a roommate because of the landlord's actions and behaviours.

Analysis

Based on the testimony and evidence presented, I find that monthly rent is \$2,500.00 a month payable on the first of the month.

I find the tenants were served with the 10-Day Notice in accordance with section 89 of the Act on March 24th, 2023.

The undisputed evidence of TP is that the landlords served the tenants with the 10-Day Notice because from January 2022 to March 2023, the tenants' failed to pay rent in the amount of \$14,550.00. Therefore, I find that the Notice was issued for a valid reason, namely, the non-payment of rent.

The 10-Day Notice is included in the evidence. I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

I find the landlords are entitled to an Order of Possession under section 55(1) of the Act which will be effective two days after service on the tenant.

Since the application relates to a section 46 notice to end tenancy, the landlords are also entitled to an order for unpaid rent under section 55(1.1) of the Act. TP's undisputed evidence is that rent is currently outstanding in the amount of \$19,550.00.

However, section 7(2) of the Act requires a that a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, TP presented no evidence to support that the landlords made any efforts to minimize their loss. The 10-Day Notice was issued over a year after the tenants' initial failure to pay rent. I find that the landlords did not satisfy the requirement under section 7(2) of the Act to do whatever is reasonable to minimize their damage or loss. On that basis, I find that the landlords are not entitled to compensation for the total amount of rent outstanding. Rather, I find that they are entitled to compensation for the last six months of the tenancy.

Based on the landlords' evidence as indicated in the Rent Overview document, from December 2022 until May 2023, the tenants made rent payments totalling \$6,600. This amount has been deducted from the total amount owing for that period of time which is \$15,000.00. Based on my calculations and pursuant to section 67 and 7(2) of the Act I order that the tenant pay to the landlords the amount of \$8,400 in outstanding rent.

The landlords continue to hold the tenants' security deposit of \$625.00 in trust for the tenant. In accordance with the off-setting provisions of section 72 of the Act, I order the landlords to retain the tenants' security deposit in partial satisfaction of the Monetary Order.

I have determined that this tenancy is ending. As a result, the tenants' applications pursuant to section 70(1) and 62 of the Act are no longer applicable to their circumstances. As a result, I have dismissed these applications without leave to reapply.

The tenants are also seeking an order requiring the landlords to return the tenants' personal property pursuant to section 65 of the Act. However, I find that the tenants' allegations of the theft of personal property is a personal dispute between the parties and therefore is not within my jurisdiction to decide. As a result, I have dismissed this application without leave to reapply.

As the tenants were unsuccessful in their application, they are not entitled to recover the filing fee paid for this application.

Conclusion

The landlords are granted an Order of Possession which will be effective two days after service on the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlords' favour in the amount of \$7,775.00 as follows:

Item	Amount
Rent due December 2022 to May 2023	\$15,000
Rent paid December 2022 to May 2023	-\$6,600.00
Security Deposit	-\$625.00
Total Monetary Order	\$7, 775.00

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 12, 2023

Residential Tenancy Branch