



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants' file: CNR, LRE, FFT
Landlord's file: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- A monetary order for unpaid rent, pursuant to section 26; and
- An authorization to recover the filing fee for this application, under section 72

The tenant's application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to section 46;
- An order to restrict or suspend the landlord's right of entry, under section 70; and
- An authorization to recover the filing fee for this application, under section 72

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and the Evidence

- The landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.
- The tenants did not submit any evidence
- The landlord served the Proceeding Package to the tenant by attaching to the door in the presence of a witness and are duly served in accordance with the Act.
- The landlord served the evidence to the tenant by attaching to the door in the presence of a witness. I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act.

Preliminary Matter

Should the hearing proceed without the tenants?

The landlord and I joined the teleconference at 11:00AM as scheduled. We were in the teleconference for a total of 56 minutes. I checked the internal case management system the day of the hearing and on the morning of September 18, 2023, for any record of contact from tenant. Rule of Procedure 7.8 requires the tenant to have a representative attend the hearing and ask for an adjournment if they require one.

The landlord was ready to proceed. In the absence of any contact from the tenant to request an adjournment, I proceeded with the hearing as permitted by Rule 7.3.

Issue(s) to be Decided

Does the 10 Day Notice end the tenancy?

Is the landlord entitled to unpaid rent?

Should the landlord's right to enter the rental unit or site be suspended or restricted?

Is either party entitled to compensation for the filing fee?

Background and Evidence

I reviewed the submitted evidence but I only make reference to relevant evidence in the section below.

Evidence was provided by the landlord showing that the tenancy started on July 16, 2022, with a monthly rent of \$4000.00 per month due on the 1st of the month.

During the hearing, the landlord stated that there had been issues related to outstanding rent since the beginning of the tenancy. The landlord also reported that he gave monetary credit towards rent for various jobs that were conducted by the tenants such as upgrades to the property; this occurred several times throughout the tenancy. These were all accounted for in the supplied ledger. The ledger shows that there is \$8,500.00 outstanding rent up to and including rent for August 2023.

I asked the landlord about the tenant's application regarding a security camera that was positioned near their main entrance that seemed to be causing a problem. The landlord reported that the camera has since been moved by the tenants, and that the landlord was content with the new location.

Analysis

Does the 10 Day Notice end the tenancy?

Given the uncontested testimony of the landlord, in addition to the evidence showing records of unpaid rent, I find that the landlord had cause on June 5, 2023, to give 10 days' notice to end the tenancy – at the time there was \$8,500.00 in missing rent according to the ledger but the landlord only asked for \$6,000.00 in his 10 Day Notice. The tenants received the notice on the same day, having signed the proof of service document.

Under section 46 the tenant had until June 10, 2023 to pay the outstanding rent and cancel the notice, which they failed to do. Therefore, the tenant's application to dispute the notice is dismissed and the landlord is entitled to an Order of Possession under section 55 of the Act.

Is the landlord entitled to unpaid rent?

Based on the landlord's undisputed testimony, tenancy agreement, and supplied ledger, I find the tenants did not pay rent in accordance with sections 26(1) and 46 of the Act and owe rent to the landlord in the amount of \$8,500.00 for in total from the start of the tenancy up to and including August 2023.

Should the landlord's right to enter the rental unit or site be suspended or restricted?

The tenants did not appear at the hearing to discuss this claim. The landlord reported that the apparent source of dispute – the security camera – has since been relocated by the tenants. As such, this claim is dismissed without leave to reapply.

Is either party entitled to compensation for the filing fee?

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of **\$8,600.00** under the following terms:

| Monetary Issue | Granted Amount |
|--|-------------------|
| a Monetary Order for unpaid rent under section 67 of the Act | \$8,500.00 |
| authorization to recover the filing fee for this application from the tenant under section 72 of the Act | \$100.00 |
| Total Amount | \$8,600.00 |

The landlord is provided with this Order in the above terms and 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: September 18, 2023

Residential Tenancy Branch