



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNOP, CNMN, OLC

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on August 11, 2023 and an Application filed by the Landlord on August 16, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- For an Order For the Landlord to comply with the Act, regulation and/or tenancy agreement

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on August 2, 2023
- For a Monetary Order for unpaid rent
- To recover the Application filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Tenants acknowledged service of the Proceeding Package and was duly served in accordance with the Act.
- I find that Landlords acknowledged service of the Proceeding Package and was duly served in accordance with the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Are the Tenants entitled to an Order For the Landlord to comply with the Act, regulation and/or tenancy agreement?
3. Are the Landlords entitled to an Order of Possession based on the Notice?
4. Are the Landlords entitled to a Monetary Order for unpaid rent?
5. Are the Landlords entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the Tenants and the Landlords but will refer only to what I find relevant for my decision.

Tenant K.G. and Landlord G.C. both testified that a month to month tenancy agreement began on August 15, 2021. The agreed rent was \$1,200.00 per month due on the first day of each month. An additional fee of \$100.00 per month for rental of the garage was agreed to by the parties on August 3, 2021. A security deposit of \$600.00 was paid by Tenants to the Landlord at the start of the tenancy and is currently held by the Landlord in trust. A copy of a tenancy agreement was submitted by the Landlords into evidence confirming these details.

The Landlords provided two copies of Notice of Rent Increase forms indicating that the initial monthly rental rate had increased from \$1,200.00 to \$1,218.00 beginning September 1, 2022 and to \$1,242.00 beginning September 1, 2023.

The Tenants and the Landlords both provided a copy of the 10 Day Notice to End Tenancy posted on the Tenant's door on August 2, 2023 for \$1,318.00 in unpaid rent.

Both Tenant K.G. and Landlord G.C. agreed that no rent was paid for August 2023.

Tenant K.G. testified that Landlord G.C. was offered the August rent on July 11, 2023 but the Landlord refused to accept it because the Landlord wanted them out based on accusations of illegal activities occurring in the rental property.

Landlord G.C. stated that she absolutely did not refuse August 2023 rent from the Tenants.

A copy of a Direct Request Worksheet was provided by the Landlord for August 2023 indicating the amount of rent due and paid during this month indicating a balance owing of \$1,218.00 in unpaid rent.

Landlord G.C. stated that rent has not been paid for September 2023.

Analysis

Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

Tenant K.G. and Landlord G.C. both testified that the rent was not paid on August 1, 2023 as required under the tenancy agreement.

The Landlords served the Notice by posting it on the Tenants' door on August 2, 2023, and Tenant K.G. acknowledged receipt of it on August 2, 2023. As such, the Tenants had until August 7, 2023 to pay the rent owing or make application for dispute resolution.

As the Tenants did not pay their arrears or dispute the notice within five days of receiving it, they are conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

Relying on the testimony of both parties as well as the Direct Request Work sheets provided, I find that the Tenants did not pay the rent due or dispute the notice within five days of receiving it. Their application for the cancellation of the Notice is therefore dismissed without leave to reapply.

Are the Tenants entitled to an Order For the Landlord to comply with the Act, regulation and/or tenancy agreement?

As the Tenants were unsuccessful in cancelling the notice and the tenancy has ended, this issue was not adjudicated.

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

Section 55 of the Act states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - a) the landlord's notice to end tenancy complies with section 52, and
 - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the Act.

The Tenants' application to dispute the Notice has been dismissed.

The Landlords' application for an Order of Possession is hereby granted under section 55 of the Act.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence submitted and the testimony of the Tenants and Landlords, I find that the Landlords have substantiated their claim for unpaid rent for August and September 2023.

I hereby grant the Landlord a monetary award in the amount of \$2,636.00 for unpaid rent for August and September 2023 under section 55(4)(b) of the Act. The Landlord may keep the Tenant's security deposit of \$609.09, including interest, per section 38(4)(b) in partial satisfaction of the outstanding rent.

Are the Landlords entitled to recover the \$100.00 filing fee?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **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 Landlords a Monetary Order in the amount of **\$2,126.91** for the recovery of the balance of the unpaid rent for August and September 2023 and for the filing fee for this application. The Landlords are 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: October 11, 2023

Residential Tenancy Branch