



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, RP, ERP, MNDC, OPR, MNR, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; orders for repairs, including emergency repairs; and, monetary compensation. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issues

1. Did the tenant file to dispute the 10 Day Notice to End Tenancy for Unpaid Rent and serve her Application for Dispute Resolution upon the landlord within the required time limits?

Both parties provided consistent submissions that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served upon the tenant in person on April 12, 2018. Under section 46 of the Act, a tenant has five days after receiving a 10 Day Notice to either pay the outstanding rent or make an Application for Dispute Resolution to dispute the 10 Day Notice. Both parties provided consistent submissions that the landlord was not provided any rent after serving the tenant with the 10 Day Notice. However, the tenant filed an Application for Dispute Resolution to dispute the 10 Day Notice. Below, I have considered whether the tenant made an Application for Dispute Resolution to dispute the 10 Day Notice within five days of receiving the 10 Day Notice.

The tenant submitted an Application for Dispute Resolution and an Application to Waive Filing Fee to the Service BC office on April 17, 2018; however, the tenant did not submit documentation to substantiate eligibility for fee waiver on that date. Rather, the tenant had an Income Verification statement signed by the Ministry of Social Development on April 19, 2018 and submitted that to the Service BC office on the same date, April 19, 2018.

According to the Residential Tenancy Branch records, the tenant's hearing package was generated by the Residential Tenancy Branch on April 20, 2018 and staff notified the tenant by telephone to pick up the documents from the Service BC office and deliver them to the landlord by April 26, 2018. The tenant did not pick up the documents until May 4, 2018.

The tenant could not recall the date she delivered her hearing documents to the landlord but she estimated it was approximately four weeks earlier. The landlord's agent testified that it was delivered by the tenant in person on May 5, 2018. The tenant confirmed that the documents were likely delivered on May 4 or 5, 2018.

The Rules of Procedure provide requirements determining when an Application for Dispute Resolution is made and what must be provided in order to consider the Application for Dispute Resolution to be made. Essentially, in order to make an Application for Dispute Resolution a filing fee must be paid or documents to demonstrate eligibility for a fee waiver must be provided. Deadlines for making an Application for Dispute Resolution are not extended to allow for the payment or submission of fee waiver documentation. Below, I have reproduced Rules 2.4 and 2.6 of the Rules of Procedure, with my emphasis underlined:

2.4 Submit an Application for Dispute Resolution

Applications for Dispute Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application. This three-day period for completing payment is not an extension of any statutory timelines for making an application.

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application. If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

The tenant in this case submitted an Application for Dispute Resolution through a Service BC office. Accordingly, the tenant was required to submit a completed Application for Dispute Resolution, Application to Waive Filing Fee, and all fee waiver documentation within five days of receiving the 10 Day Notice, or April 17, 2018. The tenant did not submit fee waiver

documentation until April 19, 2018. Accordingly, I find the tenant filed her Application for Dispute Resolution to dispute the 10 Day Notice after the time limit for doing so.

Also of consideration is that section 59 of the Act provides that an applicant is required to serve an Application for Dispute Resolution upon the other party within three days. The tenant's Application for Dispute Resolution was available for the tenant to pick up on April 20, 2018. Considering April 20, 2018 was a Friday and the Service BC office is closed on weekends, the tenant was instructed to deliver the hearing package to the landlord by April 26, 2018. The tenant did not serve the landlord until much later, on May 5, 2018, which is also well past the deadline for serving her Application for Dispute Resolution.

The Act provides that an Arbitrator may extend time limits in exceptional circumstances only. At the hearing, I asked the tenant to explain the delay in pursuing her Application for Dispute Resolution. The tenant stated she was waiting to talk to an advocate to determine the amount of "compassionate pay" she should seek from the landlord and the advocate she was working with was on vacation. The tenant's desire to pursue the landlord for "compassionate pay" is unrelated to a tenant's obligation to pay rent and disputing a 10 Day Notice since there are very limited circumstances under the Act that permit a tenant to make deductions or withhold rent from the landlord. Further, it is not appropriate or necessary to include unrelated issues in a single application as seen in Rule 2.3 of the Rules of Procedure which provides: "Claims made in the application must be related to each other." Considering the tenant only had five days to file an Application for Dispute Resolution to dispute a 10 Day Notice and her monetary claim for "compassionate pay" is unrelated to the issue of paying rent, I found the tenant's excuse for not making the Application for Dispute Resolution and serving the landlord within the required time limits did not constitute an exceptional circumstance. Therefore, I did not grant the tenant an extension of time to make her Application for Dispute Resolution to dispute a 10 Day Notice or serve the landlord with her Application for Dispute Resolution.

In light of the above, I proceed on the basis the 10 Day Notice was not disputed by the tenant within the time limit for doing so. Accordingly, I proceed to consider whether the 10 Day Notice meets the form and content requirements of the Act in order to determine the landlord's entitlement to an Order of Possession as provided under section 55(1) of the Act.

2. Service of tenant's evidence package

The tenant stated that she had provided evidence for this proceeding by delivering an evidence package to the Service BC office and leaving an evidence package in the landlord's mailbox the day before the scheduled hearing. The tenant stated that she also sent this same evidence package to the landlord via regular mail approximately one month ago. The landlord's agent stated that an evidence package was not received from the tenant by regular mail approximately one month ago as she claims and that the mailbox had not been checked the day before the hearing so the landlord's agent could not confirm whether a package was delivered yesterday. I was able to see that an evidence package had been received at the Service BC office the day

before the scheduled hearing. The first few pages include documents dated May 29, 2018 and May 31, 2018 meaning the tenant could not have sent the same evidence package to the landlord approximately one month ago and I found her claim that she did so to be not credible.

A party that serves documents and evidence bears the burden to prove when service occurred. Based on the above, I find the tenant did not satisfy me that she served her evidence package upon the landlord one month ago. Further, serving and submitting evidence one day before the scheduled hearing is much too late. An applicant is required to serve and submit evidence at least 14 full days before a scheduled hearing. Accordingly, I did not further consider the tenant's evidence package that was delivered the day before the hearing. I did; however, ask the tenant as to the nature of the evidence. The tenant stated that the evidence pertained to repairs required at the property. As explained below, I found the tenant's request for repair orders to be moot since the tenancy has ended.

Procedural Matters

1. Multiple issues contained in a tenant's application

For the reasons provided in this decision, I have found this tenancy has ended. Accordingly, I find the tenant's request for repair orders to be moot and I did not consider those requests further.

As for the tenant's monetary claim, the tenant indicated on her Application for Dispute Resolution that she is seeking an "unknown" amount of compensation from the landlord. I have not considered the tenant's monetary claim further as her losses, if any, are not specified. Accordingly, I dismissed the tenant's monetary claim with leave to reapply.

2. Request to amend landlord's monetary claim

The landlord had requested a Monetary Order for unpaid rent in the amount of \$1,230.00 at the time of filing. This amount corresponds to outstanding rent indicated on the subject 10 Day Notice served on April 12, 2018. The landlord's agent requested that the monetary claim be amended to include loss of rent for May 2018 and June 2018 since the tenant has remained in possession of the rental unit and the landlord has not received any rent for these months. The tenant acknowledged that the landlord has not received rent or monies for the months of May 2018 and June 2018 and that the tenant has continued to occupy the rental unit. Accordingly, I find the request to include additional loss of rent due to the tenant's continued occupation of the rental unit to be reasonably foreseeable and I permitted the amendment.

Issue(s) to be Decided

1. Did the landlord serve the tenant with a Notice to End Tenancy that meets the form and content requirements of the Act and is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, as amended?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy that started on February 15, 2017 for a fixed term of three months. The landlord collected a security deposit of \$450.00. The tenancy agreement requires the tenant to pay rent of \$900.00 per month.

On April 20, 2017 a hearing was held in response to Applications for Dispute Resolution filed by both parties with respect to issuance of a 10 Day Notice to End Tenancy for Unpaid rent and the matter of unpaid rent (file numbers provided on cover page of this decision). The Arbitrator presiding over the hearing found in favour of the landlord and issued an Order of Possession and a Monetary Order in the amount of \$900.00 after authorizing the landlord to retain the tenant's security deposit. The tenant applied for Review Consideration of that decision and was unsuccessful.

The landlord stated that requests were made for the tenant to pay the outstanding rent and/or vacate the rental unit after the April 20, 2017 hearing but the landlord did not enforce the Order of Possession or Monetary Order issued on April 20, 2017 in the appropriate court. With the tenant not moving and monthly payments coming from the Ministry the landlord reinstated the tenancy.

The tenancy agreement executed by the parties shows that rent is payable on the first day of every month. The landlord's agent testified that the tenancy started on the 15th day of the February 2017 and the landlord expected the tenant to pay rent for the second half of February 2017 and then on the first day of every month thereafter. The rent cheques that came to the landlord from the Ministry were received near the end of each month and were for rent for the subsequent month so the landlord considered the payments to be for the first to the last day of each month. The tenant pointed to the tenancy agreement requiring her to pay rent on the 15th day of the month but agreed that the rent has been paid by way of a Ministry cheque sent to the landlord at the end of the month for the next month. The landlord signed a Shelter Information document at the beginning of the tenancy in February 2017 and again in November 2017. The Shelter Information document requires the landlord to indicate the tenancy start date but it does not require information concerning the date the monthly rent is payable.

For the month of December 2017, the landlord's agent testified that a cheque was not received from the Ministry. Rather, the tenant picked up a cheque issued to her by the Ministry and she paid only \$570.00 in cash toward the rent for December 2017. Then, for January 2018, February 2018 and March 2018 the landlord received rent cheques directly from the Ministry in the full amount of \$900.00. Then, there was no payment received for the month of April 2018.

The tenant testified that the landlord received a rent cheque in the full amount of \$900.00 from the Ministry for the month of December 2017 although the tenant did not provide documentary evidence to show rent payments made to the landlord by the Ministry. The tenant

acknowledged that a rent payment was not delivered to the landlord for the month of April 2018 and onwards.

The tenant provided varying reasons why the rent cheque for April 2018 has not been provided to the landlord, including: the Ministry wants another signed Shelter Information form or tenancy agreement; written confirmation from the landlord that certain repairs to the heating system have been made; concerns over the living conditions at the rental unit; and, the landlord owes the tenant money for all that she has suffered including loss of foster children that were in her care.

The tenant explained that she reported repair issues to the Ministry at various times during the tenancy including the failure of the gas furnace heating system in November 2017. According to the tenant, the Ministry was willing to give the landlord some time to make the necessary repairs to the heating system but without written confirmation from the landlord that the repairs were made the Ministry withheld the April 2018 rent cheque. The tenant did not provide any written documentation from the Ministry to corroborate her statements. I noted that the tenant's explanations as to the Ministry's decisions are hearsay evidence. The tenant did not request that her Ministry worker be called to testify at the hearing.

The landlord's agent stated that the Ministry has not contacted the landlord by telephone or in writing with respect to repair issues. The landlord stated that after signing the Shelter Information document in November 2017 the only document he has been asked to sign is a letter confirming all rent has been paid but that such confirmation has not been provided since that is not an accurate statement. The landlord's agent stated that he contacted the tenant's Ministry worker after the tenant provided him a telephone number but the Ministry worker would not discuss the tenant's case with him. Also, the landlord was willing to meet the tenant at the Ministry office but the tenant did not show up.

On April 12, 2018 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with a stated effective date of April 22, 2018. The 10 Day Notice indicates rent of \$1,230.00 was outstanding. The tenant did not pay the outstanding rent and filed to dispute the 10 Day Notice after the time limit for doing so as explained earlier in this decision.

The landlord requested an Order of Possession effective as soon as possible. The tenant agreed that she needs to move out of the rental unit but requested that she be permitted to occupy the rental unit for several more weeks due to a very low vacancy rate. The landlord was not agreeable to the tenant's request for more time to move out considering the tenant sought review of the previous dispute resolution decision and did not vacate the rental unit despite the previously issued Order of Possession. Also, the tenant has already indicated she intends to appeal this decision.

The landlord requested a Monetary Order for unpaid rent of \$1,230.00 as indicated on the 10 Day Notice, plus loss of rent for May 2018 and June 2018 since the tenant continues to occupy the rental unit. The landlord is of the position that there is no longer a security deposit to offset the landlord's current losses as it was already awarded to the landlord by way of the April 20, 2017 decision to offset rental arrears from 2017.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The circumstances where a tenant may legally make deductions or withhold rent are very specific and limited under the Act. The circumstances when a tenant may legally make deductions or withhold rent are where: rent has been overpaid; overpayment of a security or pet damage deposit; costs incurred by the tenant to make emergency repairs where all the criteria of section 33 have been met; or, authorization from an Arbitrator. In this case, the tenant did not provide evidence to demonstrate she had a legal right to make deductions or withhold rent from the landlord.

Where a tenant does not pay rent that is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Although the tenancy agreement executed by the parties indicates rent is payable on the 15th day of every month, the parties were in agreement that numerous payments had been provided to the landlord at the end of each month for the next month. Accordingly, I find it is reasonable that the parties had a practice of saying rent for the first to the last day of the month and the landlord had an expectation to receive rent for April 2018 on or before April 1, 2018.

Upon receiving a 10 Day Notice, the tenant has five days to either pay the outstanding rent to nullify the Notice or make an Application for Dispute Resolution to dispute the Notice. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case, it was undisputed that the tenant received the subject 10 Day Notice by way of personal service on April 12, 2018. The Notice is in the approved form and is duly completed and signed by the landlord. The tenant did not deliver payment of any rent to the landlord at any time after receiving the 10 Day Notice. The tenant failed to dispute the 10 Day Notice but the Application for Dispute Resolution was not made within the time limit for doing so as explained in the Preliminary Issues section of this decision and an exceptional circumstance did not prevent the tenant from making and serving her Application for Dispute Resolution when required. Therefore, I have considered the 10 Day Notice to be undisputed and having been satisfied that it meets the form and content requirements of section 52 of the Act, I find the tenancy came to an end on the effective date of April 22, 2018 and the landlord is entitled to regain possession of the rental unit.

Considering the landlord has not received rent for multiple months at this point, and the tenant indicated she intends to appeal this decision, I find that to delay the effective date of the Order of Possession would be unduly prejudicial to the landlord. Therefore, I grant the landlord's request for an Order of Possession effective as soon as possible. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

As for the landlord's monetary claims, I was provided consistent testimony and evidence from both parties that the landlord has not received any rent for the months of April 2018 through June 2018 yet the tenant has occupied the rental unit for these months. Accordingly, I find the landlord entitled to recover unpaid and loss of rent for these three months. As for the month of December 2017, I find the landlord's version of events that a partial payment was received from the tenant to be more likely than the tenant's version of events. Generally, where a tenant's payment of rent is called into question, the tenant has the burden to prove payment was made. Considering the tenant claimed that December 2017 rent was paid in full by way of a Ministry cheque this would have been relatively easy for the tenant to corroborate with documentation from the Ministry yet she did not produce such documentation or call her Ministry worker to testify. The landlord's agent described how a Shelter Information document was signed on November 23, 2017 and as a result a Ministry cheque payable to the landlord for December 2017 was not available so the Ministry paid the tenant instead and I find that scenario more likely. Therefore, I find on a balance of probabilities that the tenant also owes \$330.00 in rent for the month of December 2017.

I further award the landlord recovery of the \$100.00 filing fee paid for the landlord's Application for Dispute Resolution.

As for the security deposit, upon review of the previously issued dispute resolution decision, I have confirmed that the landlord has already obtained authorization to retain the tenant's security deposit toward outstanding rent from the beginning of the tenancy. Therefore, I do not offset the awards I have made by way of this decision by the security deposit.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: December 2017 and April 2018	\$1,230.00
Loss of Rent: May 2018 and June 2018	1,800.00
Filing fee	<u>100.00</u>
Monetary Order	\$3,130.00

Conclusion

The tenancy has ended due to unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided a Monetary Order in the sum of \$3,130.00 for unpaid and loss of rent.

The tenant's request for cancellation of the 10 Day Notice was filed and served late and not accepted or considered further. The tenant's request for repair orders is moot since the tenancy is over. The tenant's monetary claim was not sufficiently specified and is dismissed with leave to reapply.

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: June 14, 2018

Residential Tenancy Branch