



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Women's Resource Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-PP, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 10 Day Notice by the landlord's representatives on January 8, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that the landlord handed them a copy of the landlord's dispute resolution hearing package on or about January 15, 2021, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*.

Landlord AG (the landlord) testified that the landlord's representatives also handed the tenant a copy of the landlord's written evidence well in advance of this hearing. Although the tenant said that they had received some written evidence from the landlord, they maintained that they had not received or had a chance to review all of this information.

Preliminary Issue – Tenant’s Request for an Adjournment

Shortly after this hearing began, the tenant advised that they had contacted the Residential Tenancy Branch (the RTB) with a request that this application be adjourned. Although they did not say when they contacted the RTB, the records confirm that no written request for an adjournment was made to the RTB. Nor is there any record of the tenant telephoning the RTB until the morning of this hearing.

The tenant explained that they were in a motor vehicle accident in late February 2021. More recently they said that they have been spending most of their time at the hospital where their son is recovering from his serious motor vehicle accident. They said that they have not had an adequate opportunity to prepare for this hearing due to these unexpected circumstances. They said that they were trying to reach “a repayment plan” with the landlord, but they have been unable to meet with them due to the motor vehicle accidents and the hospitalization of their son.

The landlord objected to the tenant’s request for an adjournment, noting that they had been attempting to meet with the tenant many times over the past months and that the tenant refuses to meet with the landlord to discuss the tenant’s failure to abide by the terms of their tenancy agreement and pay their rent.

Although parties are expected to submit requests for adjournment in advance of a hearing and seek written authorization from the other party for their requests, the RTB’s Rules of Procedure do allow for the consideration of oral requests for adjournment once a hearing begins. These Rules provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, “Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment.”

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Rule 7.11 establishes the following:

If the arbitrator determines that an adjournment should not be granted, the dispute resolution hearing will proceed as scheduled.

When a request for adjournment is refused, reasons for refusing the request will be provided in the written decision.

Given that the tenant has not applied to cancel the landlord's 10 Day Notice, has supplied no written evidence to oppose the landlord's application, and it is unlikely that an adjournment would influence the landlord's claim that they are authorized to end this tenancy based on the 10 Day Notice, I find that any further delay of this matter would further prejudice the landlord. Although the tenant disputed the amount of the monthly rent that should be paid, they did not dispute the landlord's claim that they have not paid rent for ten of the past twelve months.

Under these circumstances, I declined the tenant's oral request for an adjournment of this hearing.

Preliminary Issue- Severance of Landlord's Claim for a Monetary Order for Unpaid Rent

The RTB's Rules of Procedure 2.2 and 2.3 have a bearing on a proper consideration of the landlord's application. They read as follows:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application...

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case, the landlord advised at the hearing that an additional two months had passed with no further payments of rent to the landlord. They indicated that this increased their requested monetary award from the \$5,760.00 identified in their application to \$7,200.00. They arrived at this figure by asserting that the correct monthly rent for this rent-geared-to income room in this facility was \$720.00.

The tenant disputed this assertion, maintaining that the monthly rent for this type of rental unit elsewhere in their S.R. O, building is \$375.00 per month. The tenant noted that they had not signed the Residential Tenancy Agreement (the Agreement) and had

withheld paying rent that they believe has been overpaid since they began their tenancy in November 2019.

The landlord confirmed that the Agreement was not signed, nor was any actual monthly rental amount identified in that Agreement, created before the landlord commenced work for the society that operates this rental property.

Since there is no dispute as to the tenant's failure to apply to cancel the 10 Day Notice, I advised that I was prepared to consider the landlord's application to end this tenancy on the basis of the 10 Day Notice.

I advised the parties that I would not consider the landlord's request for a monetary award as I did not consider this portion of the landlord's application sufficiently related to the primary focus of the application, which was to end this tenancy. By invoking the discretion provided to me by Rules 2.2 and 2.3, there exists the opportunity for both sides to better prepare for consideration of a future application by the landlord for a monetary award for the recovery of monthly rent that remains owing at the time that the landlord obtains vacant possession of this property. For these reasons, I dismiss the landlord's application for a monetary award for unpaid rent with leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Background and Evidence

The parties agreed that this tenancy began in November 2019. Although an Agreement was created by the landlord at that time, the tenant has not signed the Agreement. According to the terms of the Agreement, the tenant's rent is geared to their income. The landlord noted that the tenant paid \$720.00 per month until April 1, 2020, when they discontinued making any payments to the landlord until September and October 2020, when they made two monthly payments of \$720.00.

The landlord entered into written evidence copies of letters sent to the tenant attempting to resolve this matter and the outstanding rent owing without having to resort to an application for dispute resolution to the RTB.

The landlord's 10 Day Notice identified \$3,120.00 in rent owing as of January 1, 2021. The landlord's subsequent application of January 14, 2021, sought a monetary award of

\$5,760.00 in unpaid rent. As noted earlier, at this hearing the landlord maintained that a total of \$7,200.00 remains owing.

The tenant testified that they did not apply to cancel the 10 Day Notice because they did not realize that they had to do this in order to continue their tenancy. They said that by the time that they considered applying to cancel the 10 Day Notice, they were informed that they were out of time to apply for dispute resolution.

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

While the amount of the outstanding rent in this case may remain at issue, the tenant has not disputed the landlord’s claim that they have failed to make any new monthly payments to the landlord for ten of the past twelve months.

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, that being January 18, 2021. I also note that this date occurred well in advance of the motor vehicle accidents that the tenant cited in their request for an adjournment.

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since I am satisfied by the evidence before me that the landlord is entitled to at least the amount of \$471.00 security deposit that they have been keeping for this tenancy, I order the landlord to retain the security deposit for this tenancy. This amount is to be reduced from any subsequent monetary award that the landlord may claim for unpaid rent owing from this tenancy. I make this award pursuant to sections 38 and 72(2) of the Act.

The remainder of the landlord's application is dismissed with leave to reapply.

Conclusion

I allow the landlord's application to end this tenancy on the basis of the tenant's failure to apply to cancel the 10 Day Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the security deposit for this tenancy, to be applied towards a partial recovery of unpaid rent owing from this tenancy.

The landlord's application for a monetary award for unpaid rent 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: March 22, 2021

Residential Tenancy Branch