



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MNRL-S, FFL

Tenant: CNC, CNR, RR, RP

Introduction

The tenant, the tenant's advocate and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

This was a cross application hearing that dealt with two tenant applications and a landlord application, pursuant to the *Residential Tenancy Act* (the *Act*). The tenant's first application was made on February 12, 2021 and is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice", pursuant to section 47;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant testified that the above application was made online and that she also applied to cancel a 10 Day Notice to End Tenancy for Unpaid rent on February 12, 2021 (the "First 10 Day Notice"); however, due to a computer glitch, the above claim did not appear in the first application. The tenant testified that when she learned of the error, she filed an amendment to cancel the 10 Day Notice to End Tenancy for Unpaid. The amendment was filed on February 23, 2021.

The tenant testified that her first application and amendment were served together on February 23, 2021 by placing them under a rock by the landlord's gate. The landlord

testified that he received the above documents on February 23, 2021. I find that the landlord was sufficiently served, for the purposes of this *Act*, with the above documents, pursuant to section 71 of the *Act*.

The tenant's second application for dispute resolution was made on March 12, 2021 for cancellation of another 10 Day Notice to End Tenancy for Unpaid Rent (the "Second 10 Day Notice"), pursuant to section 46.

The tenant testified that her second application for dispute resolution was served on the landlord's son at the landlord's property on March 21, 2021. The landlord testified that he received the second application from his brother in law on March 21, 2021. I find that the landlord was sufficiently served, for the purposes of this *Act*, with the above documents, pursuant to section 71 of the *Act*.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 67.
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord testified that the tenant was served with the above application for dispute resolution via registered mail on March 25, 2021. The tenant testified that she received the landlord's application for dispute resolution via registered mail but could not recall on what date. I find that the tenant was served with the landlord's application in accordance with section 89 of the *Act*.

The landlord filed an amendment to the above claim on May 3, 2021, increasing the amount of unpaid rent owed by the tenant. The landlord testified that it was served on the tenant via registered mail on May 3, 2021. The landlord provided the Canada Post tracking number in the hearing, it is located on the cover page of this decision. The tenant testified that she received it yesterday. The Canada Post website confirms the testimony of both parties. I find that the tenant was served with this amendment in accordance with section 88 of the *Act*. I find that while the tenant did not have time to respond to these materials, the landlord is entitled to amend his claim for unpaid rent pursuant to section 64(3)(c) of the *Act* and section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules").

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an

application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$2,600.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$5,000.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$5,000.00.

The tenant's first application for dispute resolution listed the tenant's two children as tenants. Only the tenant is named as a tenant on the other two applications and is the only tenant named in the tenancy agreement. Pursuant to section 64 of the *Act*, I amend the tenant's first application to remove the names of her children who are occupants, not tenants.

Preliminary Issue- Severence

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the notices to end tenancy and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notices to end tenancy. I exercise my discretion to dismiss the following tenant claims, with leave to reapply:

- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the First 10 Day Notice pursuant to section 46 of the *Act*?
3. Is the tenant entitled to cancellation of the Second 10 Day Notice pursuant to section 46 of the *Act*?
4. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
5. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
6. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
7. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
8. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2019 and is currently ongoing. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. Rent is \$1,200.00 per month.

The landlord testified that rent is due on the first day of each month. The tenancy agreement states same. The landlord testified that he verbally allowed the tenant to pay rent late for the first few months. The tenant testified that the landlord verbally allowed her to pay rent late every month.

The landlord testified that the First 10 Day Notice was left in the tenant's mailbox on February 5, 2021. The tenant testified that she received it on February 7, 2021. The First 10 Day Notice is dated February 5, 2021 and has an effective date of February 19, 2021. The First 10 Day Notice states that the tenant failed to pay \$1,400.00 that was due on February 1, 2021.

The landlord testified that the Second 10 Day Notice was left in the tenant's mailbox on March 11, 2021. The tenant testified that she did not recall when she received this. The advocate testified that the tenant received the Second 10 Day Notice on March 11-12, 2021 and that the advocate helped the tenant to file to dispute the Second 10 Day Notice on March 12, 2021. The Second 10 Day Notice is dated March 11, 2021 and has an effective date of March 25, 2021. The First 10 Day Notice states that the tenant failed to pay \$2,600.00 that was due on March 1, 2021.

The landlord testified that the One Month Notice was left in the tenant's mailbox on February 3, 2021. The tenant testified that she received it on February 4, 2021. The One Month Notice is dated February 2, 2021 and has an effective date of March 19, 2021. The One Month Notice states that the tenant is repeatedly late paying rent. Both parties agree that for most of the tenancy, the tenant paid rent after the first day of each month.

Both parties agree that the tenant paid only \$1,000.00 towards January 2021's rent. Both parties agree that the tenant did not pay any rent from February 2021 to May 2021. Both parties agree that the tenant owes the landlord \$5,000.00 in unpaid rent.

The tenant testified that she withheld the rent because the landlord did not repair the subject rental property, specifically black mold in a bathroom.

Analysis

I find that the One Month Notice, the First 10 Day Notice and the Second 10 Day Notice were all served on the tenant in accordance with section 88 of the *Act*. Upon review of all the notices to end tenancy, I find that the One Month Notice, the First 10 Day Notice and the Second 10 Day Notice all meet the form and content requirements of section 52 of the *Act*.

The testimony of the parties regarding when rent is due differs. I accept the testimony of the landlord over that of the tenant as it is supported by the tenancy agreement signed

by the tenant and the landlord which states that rent is due on the first day of each month. I accept the landlord's testimony that he allowed rent to be late for the first few months but did not agree to accept late rent throughout the duration of the tenancy agreement. I find that the tenant's testimony that the landlord did not care when rent was paid in the month does not accord with common sense and the practical business realities faced by the landlord.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00 on the first day of each month. Based on the testimony of both parties I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$5,000.00 in unpaid rent from January 2021 to May 2021. As emphasized above, the tenant is not entitled to withhold rent if the landlord does not meet the maintenance requirements set out in the *Act*. If a landlord is not meeting maintenance obligations, the tenant may file an application with the Residential Tenancy Branch for repairs.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

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

I uphold the First and Second 10 Day Notices because the tenant did not pay rent on the day it was due, and all outstanding rent was not paid within five days of receipt of either 10 Day Notice. The tenant's application to cancel the First and Second 10 Day Notices is dismissed without leave to reapply. The landlord's application for an Order of Possession based on the First and Second 10 Day Notice is granted.

As this tenancy is ending pursuant to the First and Second 10 Day Notices, I decline to consider if this tenancy would end pursuant to the One Month Notice.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$600.00 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenant.

Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
January rent	\$200.00
February rent	\$1,200.00
March rent	\$1,200.00
April rent	\$1,200.00
May rent	\$1,200.00
Filing Fee	\$100.00
Less security deposit	-\$600.00
TOTAL	\$4,500.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 19, 2021

Residential Tenancy Branch