



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT-CNC, CNR, RP, AS

Introduction

This hearing dealt with the tenant's two applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel the One Month Notice to End Tenancy for Cause, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order for regular repairs, pursuant to section 32; and
- an Order for the landlord to allow the tenant to assign or sublet, pursuant to section 65.

The landlords and the tenant 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 agreed that the landlords were served with and received the tenant's first application for dispute resolution via email on March 19, 2021. Both parties agreed that the landlords were served with and received the tenant's second application for dispute resolution on April 21, 2021 via email. I find that the landlords were sufficiently served, for the purposes of the *Act*, pursuant to section 71 of the *Act*, with the tenant's first and second applications for dispute resolution on March 19, 2021 and April 21, 2021, respectively, as the landlords confirmed receipt on those dates.

Pursuant to section 55(1) of the *Act*, when a tenant applies to cancel a notice to end tenancy I must consider if the landlord is entitled to an order of possession.

Pursuant to section 55(1.1) of the Act, when a tenant applies to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, I must consider if the landlord is entitled to a monetary order for unpaid rent.

Preliminary Issue- Amendment

Only landlord T.A. was listed as a landlord on the tenant's applications for dispute resolution. The tenancy agreement lists T.A. and S.A. as landlords. S.A. attended the hearing and testified that she is a landlord. Pursuant to section 64 of the Act, I amend the tenant's applications to list S.A. as a landlord.

Preliminary Issue- Severance

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 claim 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 parties were given a priority hearing date in order to address the question of the validity of the notices to end tenancy

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 all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy and more time to cancel the 10 Day Notice.

Issues to be Decided

1. Is the tenant entitled to more time to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 66 of the Act?
2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Act?
3. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act?

4. Is the landlord entitled to an Order of Possession, pursuant to section 55 and 46 of the *Act*?
5. Is the landlord entitled to an Order of Possession, pursuant to section 55 and 47 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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately three years ago, the most recent tenancy agreement started on November 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. The subject rental property is a house with an upper and lower suite. The subject rental property is the upper suite. The upper suite has three bedrooms. A security deposit of \$900.00 was paid by the Ministry to the landlord. The most recent written tenancy agreement and addendum that started on November 1, 2020 were signed by both parties and a copy was submitted for this application.

Term three of the addendum states:

Backyard is off limits for storage, parking, to upstairs tenants, upstairs tenants are leased for use of front yard only.

Term four of the addendum states:

Upstairs will have no more than 3 people residing at the residence.

The landlords testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on March 14, 2021 via email. The tenant testified that she received the One Month Notice on March 14, 2021. The tenant applied to cancel the One Month Notice on March 15, 2021.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Both parties agree that the tenant was late paying rent in January, February and March of 2021.

The landlords testified that the tenant was not permitted to use the back yard but filled it with junk. The One Month Notices states that on January 8, 2021 the tenant received written notice via email to clean up the yard by February 1, 2021 or the tenant will be evicted. The landlords testified that the tenant did not clean up the yard. The tenant testified that she did clean up the yard.

The landlords testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on April 10, 2021 via email. The tenant testified that she received the 10 Day Notice on April 10, 2021. The 10 Day Notice dated April 10, 2021 was entered into evidence and states that the tenant failed to pay rent in the amount of \$159.50 that was due on April 1, 2021. The tenant filed to dispute the 10 Day Notice on April 12, 2021.

Both parties agree that the Ministry pays \$1,265.50 of the tenant's rent each month. Both parties agree that the Ministry has paid \$1,265.50 for the months of April, May and June 2021. Both parties agree that the tenant is responsible for paying the difference between rent (\$1,800.00) and the Ministry payment (\$1,265.50) which equals \$534.50 and that this amount is due on the first day of each month. Both parties agree that the tenant has not made any rent payments from April to June 2021. The landlords testified that the tenant currently owes \$1,603.50 in unpaid rent.

The ledger entered into evidence by the landlords states that the next rental payment received by the landlords after the 10 Day Notice was served on the tenant was from the Ministry on April 21, 2021 in the amount of \$1,265.50. The tenant testified that she did not make any rent payments within five days of receiving the 10 Day Notice.

The tenant testified that the landlords refused to accept a total of \$750.00 in rent payments made by the Ministry so she should not be responsible for this amount as the landlords chose not to accept it.

The landlords testified that they received an auto deposit from the Ministry in the amount of \$375.00 for the benefit of C.W. on March 24, 2021; however, at the time the transfer was received they did not know it was for C.W. and believed it was for the benefit of the tenant and applied the \$375.00 to the tenant's rent. This credit is why the amount of rent stated as outstanding on the 10 Day Notice is \$159.50 rather than \$534.50 (the difference between what the Ministry pays and what rent is). The landlords

testified that when they learned the auto deposit was for the benefit of C.W. and not the tenant, they returned the \$375.00 to the Ministry.

The landlords testified that on May 5, 2021 they also received a cheque from the Ministry in the amount of \$375.00 for the benefit of C.W. and that they returned it uncashed. The landlords testified that they did not fill out any rent subsidy paperwork for C.W. and that they did not know who C.W. was which is why the payments were returned to the Ministry. The tenant testified that C.W. was a room mate who was going to stay at the subject rental property for a month or two. The landlords testified that the tenant never informed them that a new roommate was moving in. This was not disputed by the tenant.

The landlords testified that they would not have allowed C.W. to move in had they been consulted because that would make five people living at the property and only three people are allowed as per term 4 of the addendum. The tenant testified that C.W. was only the 4th person living at the property because her son was evicted. This was not disputed by the landlords. The tenant testified that she filled out the "Intent to Rent" form which allowed the landlords to receive money from the Ministry because she thought she was allowed to. The tenant testified that she did not provide the "Intent to Rent" form for C.W. to the landlords. I note that the "Intent to Rent" form has a section requiring the landlords' signature which the tenant would necessarily have either forged or signed as an agent. The landlords testified that the tenant is not their agent.

The tenant testified that C.W. did not live at the subject rental property for long because of the actions of the landlords.

Analysis

Based on the testimony of both parties, I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the One Month Notice on March 14, 2021 because the tenant confirmed receipt on that date. I find that the tenant failed to dispute the One Month Notice within 10 days of receiving it in accordance with section 47(4) of the *Act* and did not need to file for more time to cancel the One Month Notice.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Based on the testimony of both parties I find that the tenant was late paying rent in January, February and March 2021. I therefore dismiss the tenant's application to cancel the One Month Notice without leave to reapply. The One Month Notice is upheld because the tenant was late paying rent three times from January to March 2021. Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a 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 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act*, the tenant's application to cancel the One Month Notice was dismissed and the One Month Notice was upheld, the landlord is entitled to a two-day Order of Possession.

As I have determined that the landlords are entitled to an Order of Possession pursuant to section 47(1)(b) of the *Act*, I decline to consider if the landlords are entitled to an Order of Possession pursuant to section 47(1)(h) of the *Act*.

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 \$1,800.00 on the first day of each month. The tenant testified that she has not paid any rent (aside from the direct deposit from the Ministry) from April to June 2021. Based on the tenant's testimony and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act*.

I find that the tenant did not inform the landlords that C.W. was moving into the subject rental property or that the landlords could expect rent payments from the Ministry on

behalf of C.W. I find that the landlords were not obligated to accept rent money paid by the Ministry for the benefit a person unknown to them. Given the lack of information provided to the landlords, I find that the landlords acted reasonably in returning money to the Ministry they did not believe they were entitled to. I find that the tenant is responsible for all rents not paid during this tenancy, including the \$750.00 that was returned to the Ministry.

I note that the "Intent to Rent" form provided by the Ministry should have been provided to the landlords for the landlords to complete. I find, on a balance of probabilities, that the tenant did not disclose that C.W. was moving in because the tenancy agreement addendum restricted the number of occupants to three, and C.W. would not have been permitted to move in. I find on a balance of probabilities that the tenant filled in the landlord's section of the "Intent to Rent" form because the landlords would not have done so. I find that the tenant was not permitted to fill out the landlord's section of the "Intent to Rent" form. I find that the tenant acted fraudulently in filing out the "Intent to Rent" form and remains liable for all rents due under the tenancy agreement.

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.

Based on the testimony of both parties I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the 10 Day Notice on April 10, 2021 because the tenant confirmed receipt on April 10, 2021.

Based on the testimony of both parties and the ledger entered into evidence, I find that the tenant did not pay the outstanding rent within five days of receipt of the 10 Day Notice. The tenant's application to cancel the 10 Day Notice is therefore dismissed and the 10 Day Notice is upheld. Upon review of the 10 Day Notice I find that it meets the form and content requirements of the *Act*.

Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a 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 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the 10 Day Notice complies with section 52 of the *Act*, the tenant's application to cancel the 10 Day Notice was dismissed and the 10 Day Notice was upheld, the landlord is entitled to a two-day Order of Possession.

Section 55(1.1) of the *Act* states:

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Pursuant to section 55(1.1) of the *Act* I find since the 10 Day Notice complies with section 52 of the *Act*, and the tenant's application to cancel the 10 Day Notice has been dismissed and the 10 Day Notice has been upheld, I must grant the landlords a Monetary Order requiring the payment of the unpaid rent in the amount of \$1,603.50.

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 \$900.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

Conclusion

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

Item	Amount
April rent	\$534.50
May rent	\$534.50

June rent	\$534.50
Less security deposit	-\$900.00
TOTAL	\$703.50

The landlords are 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords 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.

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 22, 2021

Residential Tenancy Branch