



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC, OPR-DR-PP, MNR-DR, OPU-DR, MNU-DR, FFL (x4)
For the tenant: CNC, CNR, LRE, OLC, LAT, PSF, MNDCT, RR, FFT (x2)

Introduction

the tenant's Application

On March 10, 2021, the tenant made an Application for Dispute Resolution to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice #1") issued by the landlord on March 5, 2021.

They amended this Application to include the following:

- to cancel a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice #2") issued by the landlord on March 26, 2021;
- to have the landlord's compliance with the legislation and/or the tenancy agreement;
- to cancel a One Month Notice to End Tenancy for Cause (the "One-Month Notice #1") issued by the landlord on April 4, 2021;
- to cancel a second One-Month Notice (the "One-Month Notice #2") issued by the landlord on April 17, 2021;
- to have a restriction on the landlord's right to enter the rental unit.

the landlord's Applications

On March 11, 2021 the landlord made an Application for an Order of Possession of the rental unit, and to recover unpaid rent that was based on a repayment plan that was in

place. This was related to the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice #1”) they issued on March 5, 2021. Additionally, they applied for reimbursement of the Application filing fee. This Application was filed initially as a Direct Request; however, that method is not available where the initial Application by the tenant was already in place.

On April 13, 2021 the landlord made a second Application for an Order of Possession of the rental unit, and recovery of unpaid utilities owed by the tenant. This was related to the 10 Day Notice #2 issued by the landlord on March 26, 2021. Additionally, they applied for the reimbursement of this Application filing fee.

On May 20, 2021 the landlord made a third Application for an Order of Possession of the rental unit related to the One Month Notice to End the Tenancy for Cause issued on April 3, 2021 (the “One-Month Notice #1”). They also applied for reimbursement of the Application filing fee.

On May 20, 2021 the landlord made a fourth Application for Order of Possession of the rental unit related to a second One Month Notice to End the Tenancy for Cause issued on April 17, 2021 (the “One-Month Notice #2”). They also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 18, 2021. Due to the complexity and number of files involved, I adjourned the matter and reconvened on July 13, 2021.

At the start of the initial hearing on June 18, 2021, the tenant confirmed they received all pieces of the landlord’s prepared evidence. The landlord provided they did not receive documentary evidence from the tenant in advance.

On my review, the tenant provided only two pieces of evidence in all applications that were crossed for this hearing. These are previous Residential Tenancy Branch dispute resolution decisions between these two parties. The landlord was aware of these decisions, and provided that there were five previous hearings between the parties since 2019. With these pieces plainly within the landlord’s knowledge, the hearing proceeded on the basis of full disclosure of documentary evidence between the parties.

Preliminary Matters

the tenant's request for adjournment

At the outset of the initial hearing on June 18, the tenant asked for an adjournment so they could retain a lawyer for the hearing. They provided that the intimidation from the landlord had increased recently. At one point this involved the police. Aside from this, the tenant was having a difficult time coping with these tenancy matters and personal matters.

The landlord raised their objection to this, drawing upon the fact that there were five prior hearings between these parties since 2019. They submit the tenant was aware of the requirements for a hearing and had ample time to prepare and retain counsel if necessary.

With consideration to the *Residential Tenancy Branch Rules of Procedure*, I refused the tenant's request for adjournment and proceeded with the hearing as scheduled. This was due to my determination of prejudice to the landlord in that their applications for possession of the unit were paused for quite some time in the Application process. I also agree with the landlord that the tenant had ample time to prepare for the hearing yet neglected to retain counsel where they felt it was necessary.

the tenant's second Application

In a separate Application of March 20, 2021, the tenant disputed the One Month Notice for Cause issued by the landlord on March 10, 2021 (the "One-Month Notice #3). The tenant also included:

- compensation for monetary loss or other money owed: \$7,500
- a reduction in rent for repairs, services, or facilities agreed upon but not provided: \$2,000
- the landlord's provision of services or facilities required by the tenancy agreement or law
- a suspension or set conditions on the landlord's right to enter the rental unit or site
- authorization to change the locks to the rental unit
- the landlord's compliance with the *Act*, the regulation, and/or the tenancy agreement

- reimbursement of the Application filing fee.

For each of these sections in this Application, the tenant provided that “More details will be provided.”

The *Act* Part 5 Division 1 governs dispute resolution proceedings. In that division, s. 59(2)(b) states that an application for dispute resolution must include the full particulars of the dispute resolution proceedings. Following this, s. 59(5)(c) provides that the Arbitrator may refuse to accept the application where it does not comply with subsection (2).

I find the pieces of the tenant’s Application listed above do not include full particulars of their dispute. They do not comply with s. 59(2)(b). For this reason, I dismiss these pieces of the tenant’s March 20, 2021 Application, without leave to reapply.

For their dispute of the One-Month Notice #3, I must consider this portion of the tenant’s Application because the onus is on the landlord to prove the reasons they provided to the tenant on that document. I make that consideration below.

Issues to be Decided

- Is the tenant entitled to a cancellation of either of the One Month Notice #1, the One-Month Notice #2, or the One-Month Notice #3, pursuant to s. 47 of the *Act*?
- Is the tenant entitled to a cancellation of either of the 10-Day Notice #1 or the 10-Day Notice #2, pursuant to s. 46 of the *Act*?
- If the tenant is unsuccessful in any of their Applications, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?
- Is the landlord entitled to compensation for unpaid rent and/or utilities pursuant to s. 67 of the *Act*?
- Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?
- Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

10-Day Notice #1

The landlord issued a prior notice to end the tenancy in 2020. This was the subject of a prior hearing and on October 2, 2020 the Arbitrator dismissed the landlord's notice to end tenancy. In that conclusion of the hearing, when granting the Application filing fee to the tenant because they were successful in their Application, the Arbitrator stated: "I order that \$100.00 be deducted from the amount of rent that remains owing for this tenancy." This was in reference to a repayment plan for past rent amounts owing, issued by the landlord to the tenant in 2020. I have noted the file number on the covering page of this Decision.

The parties were at a subsequent hearing for which an Arbitrator issued a decision on December 31, 2020. The Arbitrator cancelled a prior notice to end tenancy due to flaws in the rent repayment plan prepared and issued by the landlord to the tenant. In the decision the Arbitrator left it to the landlord to serve the tenant a new repayment plan for past rent owing, consistent with the regulations. I have noted the file number on the covering page of this Decision.

The landlord then issued a new repayment plan on January 7, 2021. For each of July and August 2020, the tenant owed amounts of rent, for the total of \$6,600 owing. The landlord established a plan of \$1,320 for five months, from March 1, 2021 through to July 1, 2021.

The landlord provided a proof of service of the payment plan. This shows they hand-delivered the payment plan to the tenant on January 7. A witness signed this document to state they observed the agent of the landlord leave the copy with the tenant.

The landlord issued the 10-Day Notice #1 on March 5, 2021 for the tenant's alleged failure to make their initial payment of \$1,320. The end-of-tenancy date is March 15, 2021. The landlord provided a separate proof of service document for this, when they gave the 10-Day Notice #1 to the landlord's mother who resides at the same rental unit. A witness signed this document to state they observed that transaction.

By March 10, the tenant applied for the cancellation of the 10-Day Notice #1. On their Application, they provided only that "The notice is invalid."

In the hearing, the tenant presented that the landlord informed them in June 2020 that an amount of \$2,900 was owing for unpaid rent. Into the following month, this total became \$6,600 with the addition of the next \$3,700 full rent amount unpaid. The Arbitrator decision of October 2, 2020 – concerning a separate notice to end tenancy – has the Arbitrator granting that dispute's \$100 filing fee award to the tenant. This is "deducted from the amount of rent that remains owing for this tenancy."

Following this, the previous extant repayment plan was cancelled by another Arbitrator in the separate decision of December 31, 2020. In that decision there was no mention of this \$100 filing fee being reduced from the repayment plan. What the Arbitrator focused on were flaws in the extant repayment plan, making that associated previous 10-Day Notice invalid.

In this hearing, the tenant presented that they thought they would receive a new repayment plan following the October 2, 2020 decision, a revised payment plan that accounts for the \$100 deduction. The tenant stated they made the required rent repayment as scheduled, minus \$100. After this, the landlord issued the 10-Day Notice #1.

In their documentary evidence, the landlord presented the ledger that shows all payments for rent coming from the tenant. For March 2021 rent, the tenant paid \$700 on February 26, and the remaining \$3,000 on March 1. For the remainder of March, there is no record showing a transaction for \$1,320 paid as the repayment plan sets out. The landlord drew my attention to August 2020 to show that the full amount of rent was not paid – they reiterated that this missed month of rent was part of the reason they had to implement a repayment plan.

The landlord further explained that an amount of \$100 was previously credited to the tenant in July 2020. This was included in the \$800 amount counted as paid by the landlord for July 2020 rent – in actuality, according to the landlord, the amount owing was \$700. The landlord proposed in the hearing that this amount can be carried over to the \$100 awarded for the filing fee by the Arbitrator on October 2, 2020.

10-Day Notice #2

Additionally, the landlord in the hearing presented the reasons they issued the 10-Day Notice #2, for unpaid utilities. This followed a written demand to the tenant dated February 18, 2021, deemed served to the tenant on February 24 via registered mail.

The landlord issued the 10-Day Notice #2 on February 26, 2021. The tenant presented this notice to end tenancy was issued not more than 30 days after the landlord's written demand.

The landlord provided evidence to show the full amount of utilities owing. These are invoices showing the required amount owed. The tenant acknowledged they did not pay these utility amounts.

Analysis

Based on the above, the affirmed oral testimony of the parties, and documentary evidence, I make findings of fact as set out below.

The landlord served a new repayment plan to the tenant on January 7, 2021. On my review of the repayment plan, I find it was completed in accordance with the regulations. Following this, the tenant was required to pay the repayment amount of \$1,320. This was in addition to the regular monthly rent amount of \$3,700. For March 2021, the tenant only paid the amount of \$3,700 as shown in the ledger the landlord presented.

The *Act* s. 46(1) states that a landlord may end a tenancy if the rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the 10-Day Notice, or dispute it by filing an Application for Dispute Resolution.

I find the landlord's evidence clearly shows the tenant did not make the required payment as set out in the plan. This was a past amount of rent owing that remained unpaid.

Though the tenant claimed they were expecting a revised repayment plan as the result of the prior Arbitrator decision of October 2, 2020, I find it untenable for the landlord to issue another repayment plan. This was not ordered by an Arbitrator, nor did it form any part of an Arbitrator's finding in the previous Decision. More simply, even if there is lack of clarity on the placement of the \$100 deduction, I find the strict requirements for a tenant to pay their rent owing outweighs an allowance for a \$100 deduction.

I accept the evidence before me that the tenant failed to pay the past rent amount owing within five days granted under s. 46(4) of the *Act*. I find the reason the landlord served the 10-Day Notice #1 is valid. The tenant is not successful in seeking to cancel this 10-Day Notice #1; therefore, I dismiss the tenant's Application without leave to reapply.

The *Act* s. 55 provides that I must grant the landlord an order of possession where the tenant's Application is dismissed, *and* a 10-Day Notice complies with the s. 52 provisions of form and content. On my review of the document, I find the 10-Day Notice issued by the landlord on March 5, 2021 contains each of the necessary elements set out in s. 52.

I find the landlord had the authority to issue the Notice under s. 46 of the *Act*; therefore, I grant an Order of Possession under s. 55 of the *Act*.

I find the landlord is entitled to unpaid rent amounts owing. This is the amount for all rent amounts owed, carried over from 2020 as clearly set out in the landlord's evidence. This is \$6,600 as shown in the landlord's repayment plan and ledger. I make this award by application of s. 55(1.1) of the *Act*, as well as the basic provision of compensation set out in s. 67.

The landlord also applied for an order of possession for unpaid utilities owing from the tenant. I heard evidence and testimony from both parties in the hearing and made a tentative decision in the hearing regarding the validity of this 10-Day Notice #2. Upon review, my decision stands on the conclusion reached above on the validity of the 10-Day Notice #1, and the tenancy is ending for that reason.

The landlord made a claim for the amount owing associated with the 10-Day Notice #2. In the hearing, the tenant acknowledged they did not pay. I find the landlord is entitled to the unpaid amount of utilities, for the amount of \$827.15.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the landlords was successful in their claim regarding 10-Day Notice #1, I find they are entitled to recover the filing fee from the tenant. Given that the tenant is still entitled to a reduction in the \$100 filing fee amount from the October 2, 2020 Arbitrator decision, I cancel this \$100 amount awarded to the landlord, as recompense to the tenant. This settles the matter of the Arbitrator's granting of a deduction for that amount.

Given my conclusion that the tenancy is ending based on unpaid rent amounts owing, it is not necessary to consider the other grounds listed concerning One-Month Notice #1

and One-Month Notice #2. The portions of the tenant's Application to cancel each of these notices is cancelled, without leave to reapply. The tenant's claims for the landlord's compliance, and a restriction on the landlord's entry are dismissed because the tenancy is ending. The tenant's separate Application for cancellation of the One-Month Notice #3 is also dismissed without leave to reapply.

Reciprocally, the landlord's Applications for orders of possession on each, as well as the Application filing fee for each, are dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, the landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

Pursuant to s. 55(1.1), 67 of the *Act*, I grant the landlords a Monetary Order in the amount of \$7,427.15 for unpaid rent amounts owing, and unpaid utilities. I provide the landlord with this Order in the above terms and they must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 15, 2021

Residential Tenancy Branch