



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR, MNDCT, RP, RR, LRE, PSF, LAT, DRI
Landlord: OPR MNR MNDC MND FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 19, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlord was represented by legal counsel (collectively referred to as the Landlord), and one of the Tenants was present. Both parties confirmed receipt of each others application and Notice of Hearing packages. The Tenant’s evidence was included with her Notice of Hearing package, which the Landlord received, without issue.

The Landlord stated they sent several different emails to the Tenant, with attached evidence, and amendment documents. The Landlord was unclear and unable to confirm when they were all sent, and what they contained. The Tenant was also unclear about what was in the emails she received, as it appeared she did not receive all of the documents. In any event, I find the Landlord has failed to sufficiently demonstrate that they served their amendments and their evidence in accordance with the Act. Email is not an approved method of service under the Act, and is not acceptable unless the parties have a clear agreement that they can serve each other via email (which has not been established). I find the Landlord’s documentary evidence and amendments are not sufficiently served, and are not admissible. The Landlord relied on testimony, and the documents contained in their initial Notice of Hearing package they sent to the Tenant by registered mail.

I note the Landlord is requesting to recover the rent amounts that have accrued since the date they filed their application. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

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.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued, and what rent has accrued) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.

Issues to be Decided

- Should the Notice be cancelled?

- If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,300.00 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$650.00 and a pet deposit of \$350.00. The Landlord stated that the Tenant failed to pay any rent since March of 2021, and now owes \$1,300.00 per month for the months of April through till August 2021 (5 x \$1,300.00).

The Tenant acknowledged getting the Notice on April 12, 2021, which indicated that \$1,300.00 was outstanding for rent for the month of April 2021. A copy of the Notice was provided into evidence. The Landlord explained that this Notice was issued because no rent was received for April 2021.

The Tenant acknowledged that no rent has been paid since March 2021, and she provided no evidence or testimony that she paid any rent for April through August 2021. The Tenant stated that she receives help from the Ministry for her rent, and they have stopped paying for rent for the past few months. The Tenant stated that the Ministry stopped paying her rent because she called them to report that she may have asbestos in her unit, and she may have to stay at a hotel while it is remediated. The Tenant provided an unclear and confusing explanation as to how this happened, or what the circumstances were that led to the Ministry withholding her rent payments.

The Landlord explained that there was a water leak in the rental unit in January 2021, followed by a planned restoration in March. The Landlord explained that they engaged with qualified contractors, and were in the process of scheduling the remediation of the flood and the potential asbestos in the floor when the relationship between the parties began to degrade. The Landlord stated that there was a series of failed conversations and agreements about deductions from rent. The Landlord explained that the Tenant blocked the Landlord's text messages at the end of March, and it has been hard to communicate since this time. The Landlord stated that they are still waiting for the Tenant to allow them in so they can remediate the rental unit.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution (and have a basis for withholding rent).

I note the parties have other monetary claims against one another, relating to strata fines, and construction related losses. However, this proceeding is purely about what rent is owed, and whether or not there is sufficient evidence to support the Notice. I find the other monetary matters are not related to the payment of rent for the material months (April – August). Further, there is no evidence the Tenant had any legal basis to withhold rent under the *Act*. I note the Tenant's rent was being paid by the Ministry. However, regardless of how rent is paid by the Tenant, it is still due on time each month, in full, in the absence of any legal authority under the *Act* to withhold the rent.

I find the Notice was received by the Tenant on April 12, 2021. Further, the undisputed testimony of both parties is that rent was not paid for April 2021, or any month thereafter. It does not appear any rent has been paid since March 2021. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application to cancel the Notice is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of April – August 2021 (\$1,300.00 x 5).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$6,500.00
Other:	
Filing fee	\$100.00
LESS:	
Security and pet Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$5,600.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,600.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 19, 2021