



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Haven Managment Co. LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNRL, FFL
Tenant: MT-CNL, CNR, FFT

Introduction

This was a cross application hearing that dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*). The tenant's first application made on May 1, 2021 is for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant's second application made on July 16, 2021 is for:

- more time to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 66;
- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant and the landlord's agent 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.

Both parties agree that the landlord was served with both of the tenant's applications for dispute resolution in person. I find that the landlord was served with both of the tenant's applications for dispute resolution in accordance with section 89 of the *Act*.

Both parties agree that the landlord served the tenant with the landlord's application for dispute resolution via registered mail. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to more time to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 66 of the *Act*?
3. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*?
4. Is the tenant entitled to recover the filing fees for these applications from the landlord, pursuant to section 72 of the *Act*?
5. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
6. Is the landlord entitled to a Monetary Order for unpaid rent or utilities, pursuant to section 67 of the *Act*?

7. Is the landlord entitled to authorization to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?
8. If the tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property is dismissed or the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, and the Two Month Notice to End Tenancy for Landlord's Use of Property complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 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 agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2018 and is currently ongoing. Monthly rent in the amount of \$2,565.00 is payable on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") dated May 19, 2021 on May 20, 2021 via registered mail. The tenant testified that he received the 10 Day Notice two or three days after it was mailed. The agent entered into evidence the Canada Post tracking information. The Canada Post website states that the above package was delivered on May 23, 2021. The tenant applied to cancel the 10 Day Notice on May 28, 2021, five days later.

The 10 Day Notice was entered into evidence and states that the tenant failed to pay utilities in the amount of \$5,342.00 following written demand on April 16, 2021. The agent testified that the April 16, 2021 written demand was sent via email. The email was not entered into evidence and the tenant testified that at that time he was having trouble with his computer and did not receive it. The landlord entered into evidence emails demanding payment of utilities dated May 25, 2021 and April 27, 2021. The tenant testified that he did not receive these.

The tenancy agreement states in section 5 of the tenancy agreement:

Only those utilities, facilities, services, furnishings, equipment, and appliances checked below will be provided and included in the rent. See clause 13, Utilities Payment...

Sewage disposal, and water supply were listed in the tenancy agreement but are not checked off. The landlord and tenant's initial are on the bottom of the page close to the list of utilities, facilities, services, furnishings, equipment and appliances listed in the tenancy agreement.

Section 8 of the tenancy agreement states in part:
Tenants are responsible for utility payments.

The tenant and the landlord's initials are on the bottom of the page in which section 8 of the tenancy agreement is written. Both parties signed the tenancy agreement.

The tenant testified that he was told when he signed the tenancy agreement that he was responsible for water, but no one told him he had to pay for sewage. The tenant testified that he thought sewage was part of the landlord's taxes. The agent testified that the tenancy agreement is clear and that the tenant is responsible for water and sewage.

Both parties agree that the tenant has not paid any water or sewage bills for the duration of this tenancy.

The agent entered into evidence annual water and sewage bills for the years 2019 to 2021. The agent testified that the bills are billed annually and are a yearly flat rate, not metered consumption.

The 2019 annual utility bill from the City states that the annual sewer amount is \$796.00, and the annual water amount is \$909.00 for a total bill of \$1,705.00.

The 2020 annual utility bill from the City states that the annual sewer amount is \$831.00, and the annual water amount is \$951.00 for a total bill of \$1,782.00.

The 2021 annual utility bill from the City states that the annual sewer amount is \$874.00, and the annual water amount is \$981.00 for a total bill of \$1,855.00.

The landlord's monetary claim is for \$5,442.00, the sum of all three utility bills. The agent testified that if the tenancy ends before the end of 2021, the tenant is not

responsible for the entire 2021 bill, just for the months the tenant resides at the subject rental property.

The tenant testified that he owes the water bills, but not the sewage bills.

Both parties agree that the landlord personally served the tenant with a Two Month Notice for Landlord's Use of Property (the "Two Month Notice") on June 30, 2021. Neither party entered into evidence a copy of the Two Month Notice. I granted both parties 24 hours to upload the Two Month Notice. The Two Month Notice was uploaded in the 24 hours following the hearing.

Both parties agree that the Two Month Notice is signed by the landlord, dated June 30, 2021 and has an effective date of August 31, 2021. Both parties agree that the Two Month Notice states that the landlord is ending the tenancy because the landlord or a close family member of the landlord is moving into the subject rental property. The tenant applied to cancel the Two Month Notice on July 16, 2021, 16 days after receiving the Two Month Notice.

The tenant testified that he filed his application to cancel the Two Month Notice late because he was having trouble working with his computer, so he came in and did it on paper.

The tenant testified that he filed to cancel the Two Month Notice because he needs more time to find a new place to live.

Both parties agree that the tenant has paid all of September 2021's rent.

Analysis

I find that the landlord served the tenant with the 10 Day Notice in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Based on the written tenancy agreement signed by both parties, I find that the tenant is required to pay the water and sewage utilities at the subject rental property. The tenant signed the tenancy agreement and is bound by its terms. Failure to properly read the tenancy agreement before signing it does not remove the tenant from the tenant's legal obligation to pay the water and sewage utilities.

Section 46(6) of the *Act* states:

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The agent testified that the landlord emailed the tenant written demand for payment on April 16, 2021 and again on April 27, 2021 and May 25, 2021. The tenant testified that he did not receive the above demands.

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a)by leaving a copy with the person;

(b)if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e)by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service provided for in the regulations.

Section 43(1) of the Regulation to the Residential Tenancy Act states:

43 (1)For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

Neither party entered into evidence written authorization to serve the other via email. I find that the agent did not prove that the landlord was permitted to serve the written demands on the tenant via email. I find that the landlord did not serve the tenant with written demand for payment of utility bills in accordance with section 88 of the *Act* and so is not entitled to treat the unpaid utility charges as unpaid rent and serve the tenant with the 10 Day Notice under section 46 of the *Act*. I therefore cancel the 10 Day Notice.

Based on the testimony of both parties and the evidence provided, I find that service of the Two Month Notice was effected on the tenant on June 30, 2021, in accordance with section 88 of the *Act*. Upon review of the Two Month Notice I find that it meets the form and content requirements of the *Act*.

Section 49(5) and section 49(6) of the *Act* state that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. In this case, the tenant did not dispute the Two Month Notice

within 15 days of receiving it. The tenant applied for more time to dispute the Two Month Notice.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The tenant testified that he was unable to file to cancel the Two Month Notice on time because he had problems with his computer. I find that this is not an exceptional circumstance. The tenant previously filed in person to cancel the 10 Day Notice within the five-day time limit. I find that the tenant was aware how to file an application with the Residential Tenancy Branch and failed to do so within the required timelines. I find that the tenant was provided with ample time to dispute the Two Month Notice and failed to do so within 15 days of its receipt.

I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Two Month Notice within 15 days of receiving the Two Month Notice led to the end of this tenancy on the effective date of the notice. I therefore dismiss the tenant's application to cancel the Two Month Notice and uphold the Two Month Notice.

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 Two Month Notice complies with section 52 of the *Act*, the tenant's application to cancel the Two Month Notice was dismissed, and the Two Month Notice was upheld, the landlord is entitled to an Order of Possession. As the tenant has paid

for September's rent and the likelihood of finding new accommodation two days after service of an Order of Possession is unlikely, the effective date of the Order of Possession is September 30, 2021.

The landlord's application for dispute resolution also sought a monetary award for unpaid utilities in the amount of \$5,342.00. As stated earlier in this decision, pursuant to the tenancy agreement the tenant is required to pay water and sewage utilities. Based on the water and sewage utility bills entered into evidence, I find that the tenant is required to pay the entirety of the 2019 and 2020 utility bills totalling \$3,487.00. I find that the tenant is required to pay the 2021 bill on a pro-rated basis according to the following calculation:

$$\$1,855.00 \text{ (total 2021 bill)} / 12 \text{ (months in a year)} = \$154.58 \text{ (monthly rate)}$$

$$\$154.58 * 9 \text{ (months - January to September 2021)} = \$1,391.22$$

As both parties were partially successful in these applications for dispute resolution I find that neither party is entitled to recover their filing fee(s) from the other, 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 or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit and pet damage deposit totalling \$2,500.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2021**, which should be served 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
2019 utility bill	\$1,705.00
2020 utility bill	\$1,782.00
2021 utility bill – pro-rated	\$1,391.22

Less security deposit	-\$1,250.00
Less pet damage deposit	-\$1,250.00
TOTAL	\$2,378.22

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: September 15, 2021

Residential Tenancy Branch