



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant and an agent of 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 orders.

The tenant testified that she did not know when or how the landlord was served with this application for dispute resolution. The agent testified that the landlord was served with this application for dispute resolution but did not know how or when. I find that the tenant's application for dispute resolution was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the agent confirmed receipt.

Both parties agree that the tenant was served with the landlord's evidence via registered mail. I find that the landlord's evidence was served on the tenant in accordance with section 88 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 and or a monetary order for unpaid rent 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*.

Preliminary Issue

After the hearing upon review of the tenancy agreement and the tenant’s signature I noticed that the tenant mis-spelled her first name in this application for dispute resolution. One letter from the tenant’s first name is missing on the original application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenant’s application to correctly spell her first name.

Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. If the tenant’s application is dismissed or the landlord’s Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?
4. If the tenant’s application is dismissed or the landlord’s Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to a Monetary Order for unpaid rent, 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 landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and is currently ongoing. Monthly rent in the amount of \$811.20 is payable on the first day of

each month. A security deposit of \$390.00 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. At the start of this tenancy rent was \$780.00 payable on the first day of each month.

The agent testified that a Notice of Rent Increase was posted on the tenant's door on December 27, 2017 which increased the tenant's rent to \$811.20 effective July 1, 2018. The Notice of Rent Increase was entered into evidence. The tenant testified that she has a very poor memory and that she did not recall if she was served with the Notice of Rent Increase.

The agent testified that the tenant started getting behind in her rent payments in February of 2018 and the amount owing has grown over the years. The agent testified that the landlord has tried to work with the tenant to pay the arrears, but the tenant has been unable to pay the outstanding rent.

The landlord entered into evidence a rent ledger which states:

Date	Description	Debit	Credit	Balance
February 1, 2018	Rent	\$780.00	\$390.00	\$390.00
February 8, 2018	Rent		\$375.00	\$15.00
March 1, 2018	Rent	\$780.00	\$780.00	\$15.00
April 1, 2018	Rent	\$780.00		\$795.00
April 3, 2018	Rent		\$780.00	\$15.00
May 1, 2018	Rent	\$780.00	\$780.00	\$15.00
June 1, 2018	Rent	\$780.00	\$780.00	\$15.00
July 1, 2018	Rent	\$811.20		\$826.20
July 3, 2018	Rent		\$780.00	\$46.20
August 1, 2018	Rent	\$811.20	\$811.20	\$46.20
September 1, 2018	Rent	\$811.20		\$857.40
September 4, 2018	Rent		\$811.20	\$46.20
October 1, 2018	Rent	\$811.20	\$811.20	\$46.20
November 1, 2018	Rent	\$811.20	\$811.20	\$46.20
December 1, 2018	Rent	\$811.20		\$857.40
December 3, 2018	Rent		\$811.20	\$46.20
January 1, 2019	Rent	\$811.20		\$857.40
January 2, 2019	Rent		\$811.20	\$46.20
February 1, 2019	Rent	\$811.20	\$811.20	\$46.20

March 1, 2019	Rent	\$811.20	\$811.20	\$46.20
April 1, 2019	Rent	\$811.20	\$811.20	\$46.20
May 1, 2019	Rent	\$811.20	\$811.20	\$46.20
June 1, 2019	Rent	\$811.20		\$857.40
June 3, 2019	Rent		\$811.20	\$46.20
July 1, 2019	Rent	\$811.20		\$857.40
July 2, 2019	Rent		\$811.20	\$46.20
August 1, 2019	Rent	\$811.20	\$811.20	\$46.20
September 1, 2019	Rent	\$811.20		\$857.40
September 3, 2019	Rent		\$405.60	\$451.80
October 1, 2019	Rent	\$811.20	\$405.60	\$857.40
November 1, 2019	Rent	\$811.20	\$405.60	\$1,263.00
December 1, 2019	Rent	\$811.20		\$2,074.00
December 4, 2019	Rent		\$780.60	\$1,293.00
January 1, 2020	Rent	\$811.20		\$2,104.80
January 2, 2020	Rent		\$1,205.60	\$899.20
February 1, 2020	Rent	\$811.20		\$1,710.40
February 3, 2020	Rent		\$405.60	\$1,304.80
February 6, 2020	Rent		\$400.00	\$904.80
March 1, 2020	Rent	\$811.20		\$1,716.00
March 2, 2020	Rent		\$405.60	\$1,310.40
March 4, 2020	Rent		\$400.00	\$910.40
April 1, 2020	Rent	\$811.20	\$405.60	\$1,316.00
May 1, 2020	Rent	\$811.20	\$405.60	\$1,721.60
May 6, 2020	Rent		\$400.00	\$1,321.60
June 1, 2020	Rent	\$811.20	\$405.60	\$1,727.20
June 4, 2020	Rent		\$400.00	\$1,327.20
July 1, 2020	Rent	\$811.20	\$405.60	\$1,732.80
July 8, 2020	Rent		\$400.00	\$1,332.80
August 1, 2020	Rent	\$811.20		\$2,144.00
August 4, 2020	Rent		\$405.60	\$1,738.40
August 10, 2020	Rent		\$400.00	\$1,338.40
September 1, 2020	Rent	\$811.20		\$2,149.60
September 2, 2020	Rent		\$405.60	\$1,744.00
September 5, 2020	Rent		\$400.00	\$1,344.00
October 1, 2020	Rent	\$811.20	\$405.60	\$1,749.60
October 9, 2020	Rent		\$400.00 reversed March	\$1,349.60

			1, 2021- duplicated posting on Oct 13	
October 13, 2020	Rent		\$400.00	\$949.60
November 1, 2020	Rent	\$811.20		\$1,760.80
November 2, 2020	Rent		\$405.60	\$1,355.20
November 6, 2020	Rent		\$400.00	\$955.20
December 1, 2020	Rent	\$811.20	\$805.60	\$960.80
January 1, 2021	Rent	\$811.20		\$1,772.00
January 6, 2021	Rent		\$405.60	\$1,366.40
January 7, 2021	Rent		\$400.00	\$966.40
February 1, 2021	Rent	\$811.20		\$1,777.60
February 2, 2021	Rent		\$405.60	\$1,372.00
February 11, 2021	Rent		\$400.00	\$972.00
March 1, 2021	Rent	\$811.20	-\$400.00 reversed duplicated posting from October 13	\$2,183.20
March 2, 2021	Rent		\$405.60	\$1,777.60
April 1, 2021	Rent	\$811.20		\$2,588.80
April 8, 2021	Rent		\$800.00	\$1,788.80
April 9, 2021	Rent		\$405.60	\$1,383.20
May 1, 2021	Rent	\$811.20		\$2,194.40
May 4, 2021	Rent		\$405.60	\$1,788.80
May 7, 2021	Rent		\$400.00	\$1,388.80
June 1, 2021	Rent	\$811.20	\$300.00	\$1,900.00
June 9, 2021	Rent		\$100.00	\$1,800.00
June 15, 2021	Rent		\$405.60	\$1,394.40
July 1, 2021	Rent	\$811.20		\$2,250.60
July 2, 2021	Rent		\$405.60	\$1,800.00
July 13, 2021	Rent		\$300.00	\$1,500.00
July 26, 2021	Rent		\$100.00	\$1,400.00
August 1, 2021	Rent	\$811.20		\$2,211.20
August 3, 2021	Rent		\$405.60	\$1,805.60
August 6, 2021	Rent		\$400.00	\$1,405.60
September 1, 2021	Rent	\$811.20		\$2,216.80

September 2, 2021	Rent		\$405.60	\$1,811.20
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The agent testified that since September 2, 2021 the tenant paid an additional \$400.00 on September 8, 2021 and currently owes \$1,411.20.

The agent testified that the tenant was first served with a 10 Day Notice to End Tenancy for Unpaid rent on November 5, 2019 (the "First 10 Day Notice") by posting on the tenant's door. The First 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$800.00 that was due on October 1, 2019. The agent testified that in January 2020 the tenant made an effort to pay off the outstanding balance and the landlord thought the tenant was on track to bring the balance back to \$0.00 outstanding and so the First 10 Day Notice was not enforced.

The tenant testified that she may have been served the First 10 Day Notice but that she could not remember.

The agent testified that the landlord has been very patient and has tried to work with the tenant but that the tenant has failed to pay off her outstanding balance since 2018 and the landlord is not willing to allow the outstanding balance to continue to grow. The agent testified that the bulk of the outstanding rent stems from September to November of 2019 when the tenant's room mate moved out and the tenant was not able to pay all of the rent. The agent testified that since then the tenant has routinely paid \$5.60 less per month than her rent.

The tenant testified that she thought her roommate was paying rent from September to November in 2019. The tenant testified that the landlord told her not to pay for that period because her room mate was still paying. This was disputed by the agent.

The tenant testified that 2019 was a long time ago and that she does not specifically recall the rent payments made at that time but that she thinks that she would have paid all her rent in 2019 because she always pays her rent. The tenant testified that she didn't know she was routinely short \$5.60 on her rent and if she had known she would have paid the full amount owed.

The tenant testified that she is shocked that the landlord says she owes rent money and is trying to understand where this is all coming from. The agent testified that the landlord has continuously spoken with the tenant about her arrears and many warning letters have been sent in addition to the First 10 Day Notice. The tenant testified that the landlord has spoken to her about arrears but never "pinned it down".

The agent testified that a second 10 Day Notice to End Tenancy for Unpaid Rent dated May 7, 2021 (the "Second 10 Day Notice") was served on the tenant via registered mail on May 7, 2021. The agent entered into evidence a Canada Post registered mail receipt dated May 7, 2021 stating same. The tenant testified that she did not remember if she received the Second 10 Day Notice. The Canada Post website states that the above package was successfully delivered on May 11, 2021. The tenant applied to cancel the Second 10 Day Notice on May 13, 2021.

The Second 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,383.20.

The tenant did not provide any testimony regarding her claim for an Order for the landlord to comply with the *Act*. The tenant's application for dispute resolution states:

Landlord is trying to evict many tenants from this building, this building is low rent. She has put cameras in the outside courtyard, she keeps telling me she is waiting for me to make a mistake then will evict me. I am on disability, this is causing me and many of the tenants stress and anxiety. Rental are high, she used this to make us fear that we will be evicted all the time.

Analysis

The agent testified that the tenant is chronically behind on rent. The tenant testified that she did not have a good memory but that she would have paid any rent owed. The tenant disputed being aware of rental arrears dating back to February 2018 and then later testified that the landlord had spoken to her about rental arrears, but had not "pinned it down". I found the tenant's testimony to carry little weight as she repeatedly testified that she could not remember and relied upon what she thought she would have done in the circumstances described. In addition, the tenant's testimony contradicted itself regarding her knowledge of rental arrears. I find that the tenant's testimony of events and rent paid to be unreliable. I find the detailed ledger kept by the landlord confirms and supports the testimony provided by the agent. Where the testimony of the tenant and the agent differ, I prefer the testimony of the agent.

I accept the agent's testimony that a Notice of Rent Increase was posted on the tenant's door on December 27, 2017. I find that the tenant was deemed served with the Notice of Rent Increase on December 30, 2017, pursuant to sections 88 and 90 of the *Act*. This finding is supported by the tenant's testimony that rent is currently \$811.20 as the above

Notice of Rent Increase is the document that increased the rent to this amount. I find that as of July 1, 2018, the tenant's rent was \$811.20.

Based on the agent's testimony, the registered mail tracking receipt, and the Canada Post tracking website, I find that the tenant received the Second 10 Day Notice on May 11, 2021 via registered mail. This finding is also supported by the fact that the tenant filed to cancel the Second 10 Day Notice on May 13, 2021, had the tenant not received the Second 10 Day Notice it is unlikely she would have filed to cancel it. I find that the tenant was served with the Second 10 Day Notice in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice I find that it conforms to the form and content requirements of section 52 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*. Based on the Notice of Rent Increase and the agent's testimony and pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$811.20 on the first day of each month effective July 1, 2018. Based on the testimony of both parties and the tenancy agreement entered into evidence, I find that from July 1, 2017 to June 1, 2018 the tenant was required to pay the monthly rent of \$780.00. Based on the testimony of the agent and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$1,411.20 in unpaid rent from February 2018 to September 2021.

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 agent's testimony and the ledger entered into evidence, I find that the tenant did not pay the overdue rent within five days of receiving the Second 10 Day Notice. Pursuant to section 46 of the *Act*, I dismiss the tenant's application to cancel the Second 10 Day Notice and uphold the Second 10 Day Notice.

Section 55(1) and section 55(1.1) of the *Act* state:

- 55** (1) 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.

(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.

Since the tenant's application was dismissed and the 10 Day Notice complies with section 52 of the *Act*, pursuant to section 55 (1) and section 55(1.1) of the *Act*, I must grant the landlord a monetary award for unpaid rent in the amount of \$1,411.20 and an Order of Possession effective two days after service on the tenant.

I find that the tenant has not substantiated her claim for an Order for the landlord to comply with the *Act* as she did not provide testimony on the above claim. I find that the landlord did not breach the *Act* by serving the tenant with the Second 10 Day Notice because the landlord is entitled to serve 10 Day Notices when rent is not paid. The tenant's application for an Order for the landlord to comply with the *Act* is dismissed without leave to reapply.

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 \$390.00 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenant.

Conclusion

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

Item	Amount
Unpaid rent	\$1,411.20
Less security deposit	-\$390.00
TOTAL	\$1,021.20

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.

Pursuant to section 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.

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 22, 2021

Residential Tenancy Branch