



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC 1104420 LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, FFT, OPU-DR, MNU-DR, MNDCL, MNDL, MNRL, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On August 5, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 11, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 12, 2021, the Landlord amended his Application to increase the amount of monetary compensation being sought pursuant to Section 67 of the *Act*.

The Tenant attended the hearing. D.M. and S.C. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties

acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on or around August 24, 2021. However, she did not have any proof of this service. D.M. advised that the Landlord was never served the Tenant's Notice of Hearing package and he was only aware of this Application by way of an email he received after contacting the Residential Tenancy Branch. Given that there is no proof of service provided by the Tenant to corroborate service, I am not satisfied that the Landlord has been duly served this package. As such, the Tenant's Application for Dispute resolution is dismissed without leave to reapply.

D.M. advised that the Tenant was served the Notice of Hearing package by leaving it with an adult who apparently resides with the Tenant. However, he was not sure when this was done. The Tenant confirmed that she received this package on August 27, 2021, but she claimed that this package was not served in accordance with the *Act*. She could not provide any valid reasons for why this would be prejudicial to her. Given that the Tenant acknowledged that she received this package on August 27, 2021, and as it was served in a manner permitted under Section 89 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing package.

D.M. then advised that the Tenant was served the Landlord's Amendment package, on October 13, 2021, by leaving it with an adult who apparently resides with the Tenant. The Tenant confirmed that she received this Amendment on October 13, 2021. As the Amendment was served to the Tenant in accordance with the timeframe requirements of Rule 4.6 of the Rules of Procedure (the "Rules"), I am satisfied that the Tenant was sufficiently served the Amendment.

The Tenant advised she served her evidence to the Landlord by registered mail on October 14, 2021. D.M. confirmed that he received this evidence on October 18, 2021, that he had reviewed it, and that he was prepared to respond to it. Despite this evidence being served late, and not in accordance with Rule 3.14 of the Rules, as D.M. was prepared to respond to this evidence, I have accepted it and will consider it when rendering this Decision.

D.M. advised that he served the Landlord's evidence, on October 13, 2021, by leaving it with an adult who apparently resides with the Tenant. The Tenant acknowledged that D.M. and S.C. each served an evidence package to an adult who apparently resides

with the Tenant, and that she received this evidence on October 13, 2021. As this evidence was served in a manner pursuant to the *Act* and in accordance with the timeframe requirements of Rule 3.14 of the Rules, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2020, that rent was currently established at an amount of \$5,000.00 per month, and that it was due on the first day of each month. A security deposit of \$2,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

D.M. advised that the Notice was served to the Tenant, on August 2, 2021, by leaving it with an adult who apparently resides with the Tenant. The Tenant clearly received this Notice as she disputed it on August 5, 2021. He submitted that \$5,000.00 was owing for

rent on August 1, 2021 and \$1,000.00 was owing for utilities following a written demand. However, he was not sure when this written demand was given, and the Notice indicated that the written demand was served on August 6, 2021. The effective end date of the tenancy was noted as August 12, 2021.

D.M. advised that the Tenant only paid \$2,500.00 for July 2021 rent and \$2,500.00 for August 2021 rent. Thus, the Notice was served. The Tenant has not paid any rent for September or October 2021. He referenced the Tenant's documentary evidence to support his position of the rental arrears. He stated that the Tenant did not have any authorization to withhold the rent.

The Tenant acknowledged that she only paid half of July and August 2021 rent and that she has not paid any rent since. She confirmed that she did not have any authority under the *Act* to withhold the rent. She submitted that it was her belief that she had an agreement with D.M. to pay only a portion of the rent; however, she did not have any documentation to corroborate this submission.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 46 of the *Act* states that if the utilities owed by the Tenant 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 the Notice. However, as the Landlord served the Notice on August 2, 2021 but stated on the Notice that the written demand was given four days later on August 6, 2021, this would not be feasibly possible. Furthermore, as 30 days would not have elapsed yet, this amount of utilities owed could not have been considered as unpaid rent and added to this Notice. As such, I find that this is a fatal flaw that would render considering the utilities on this Notice to be unenforceable. Consequently, D.M. was advised during this hearing that the only issue that would be addressed would be the matter of the unpaid rent.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant received the Notice on August 2, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *“If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date.”*

As the Notice was received on August 2, 2021, the Tenant must have paid the rent in full by August 7, 2021 or disputed the Notice by Monday August 9, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by August 7, 2021 to cancel the Notice. While the Tenant disputed this Notice, her Application was dismissed without leave to reapply. Regardless, even if it was not dismissed without leave to reapply, as the Tenant did not have a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rent arrears for July, August, September, and October 2021, and I grant the Landlord a monetary award in the amount of **\$15,000.00**.

The rest of the Landlord's claims for monetary compensation on this Application are **dismissed with leave to reapply**.

As the Tenancy has been determined to have ended pursuant to the Notice, it was not necessary to consider the merits of the One Month Notice to End Tenancy for Cause.

As the Tenant's Application was dismissed without leave to reapply, she was not successful in this Application. As such, I find that she is not entitled to recover the \$100.00 filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for July 2021	\$2,500.00
Rental arrears for August 2021	\$2,500.00
Rental arrears for September 2021	\$5,000.00
Rental arrears for October 2021	\$5,000.00
Filing Fee	\$100.00
Total Monetary Award	\$15,100.00

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, 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, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$15,100.00** 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: October 28, 2021

Residential Tenancy Branch