



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR
Landlord: OPR, MNR, FFL

Introduction

The Tenant applies to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”).

In a cross-application, the Landlord seeks an order for possession pursuant to s. 55 of the *Act*, a monetary order for unpaid rent pursuant to s. 67, and return of the filing fee pursuant to s. 72.

J.M. appeared on behalf of the Landlord. The Tenant did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 9:30 AM on October 19, 2021. As the Tenant did not appear at the hearing, it was conducted in her absence pursuant to Rule 7.3.

The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. I advised the Landlord of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing.

The Landlord advised having served a 10-Day Notice to End Tenancy signed June 14, 2021 by posting it to the Tenant’s door on June 14, 2021. The Landlord submits a proof of service form into evidence verifying the Landlord’s submissions. I find that the 10-Day Notice to End Tenancy was served in accordance with s. 88 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Notice to End Tenancy on June 17, 2021.

The Landlord indicating sending the Notice of Dispute Resolution and initial evidence to the Tenant by way of registered mail sent on July 15, 2021 and included a tracking number into evidence. I find that the Notice of Dispute Resolution and initial evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served with the Notice of Dispute Resolution and initial evidence on July 20, 2021.

The Landlord acknowledged receipt of the Tenant's application and I find that he was sufficiently served in accordance with s. 71(2)(b) of the *Act*.

Preliminary Issue – Landlord's Late Evidence

The Landlord indicated having served additional evidence on the Tenant by way of registered mail sent on October 10, 2021. I decline to consider this evidence on the basis that it contained emails from other occupants at the residential property regarding behaviour complaints, which is not directly related to the issue of unpaid rent and the 10-Day Notice to End Tenancy. Pursuant to Rule 3.6, I decline to consider the late evidence of October 10, 2021 as it is not relevant to either the Landlord's application or the Tenant's application.

Preliminary Issue – Amendment to Style of Cause

The Landlord is listed as a corporate entity in their cross-application, however, the Tenant lists J.M. as the Landlord in her application. I accept that the Landlord in its cross-application would be aware of the proper named Landlord. Pursuant to Rule 4.2 of the Rules of Procedure, I amend the style of cause in the Tenant's application to align with the named Landlord in the Landlord's cross-application.

Issue(s) to be Decided

- 1) Whether the 10-Day Notice to End Tenancy ought to be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) What monetary award, if any, ought to be granted for unpaid rent?
- 4) Is the Landlord entitled to its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advised that the tenancy began on April 1, 2020. When the tenancy began, the primary tenant was M.P., who moved out sometime in April or May 2021. The Tenant C.L. moved into the unit with M.P. when the tenancy began on April 1, 2020. Though the Landlord was unclear on whether the Tenant kicked M.P. out of the rental unit or M.P. left of his own accord, he was clear that the Tenant C.L. continues to reside within the rental unit. Rent was payable in the amount of \$750.00 due on the 1st day of each month. The Landlord confirmed holding a security deposit of \$375.00 and a pet damage deposit of \$375.00 in trust for the Tenant.

The Landlord issued the Notice to End Tenancy on June 14, 2021 on the basis that the Tenant had failed to pay rent in full when it was due on June 1, 2021. The Landlord advised having received \$450.00 from the Landlord on June 9, 2021. The amount that was listed as owed in the notice was \$750.00.

The Landlord indicates that the Tenant C.L. has not paid the outstanding rent of \$300.00 for June 2021. The Landlord further confirmed that the Tenant C.L. has not paid rent for the months of July, August, September, and October 2021.

Analysis

The Tenant applies to cancel the 10-Day Notice to End Tenancy signed June 14, 2021 while the Landlord seeks an order for possession and monetary award for unpaid rent.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I find that the 10-Day Notice to End Tenancy signed June 14, 2021 complies with the formal requirements of s. 52. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (Residential Tenancy Branch-30). Though the amount due lists \$750.00 rather than the correct amount of \$300.00, I am satisfied that

the Tenant had outstanding rent on June 14, 2021 and I amend the Notice to End Tenancy to reflect arrears of \$300.00 in the notice pursuant to s. 68 of the *Act*.

I note that the original tenancy agreement stated that the tenant was M.P. who appears to have vacated the residential unit in April or May 2021. C.L. has occupied the rental unit since April 1, 2020 and is listed as a tenant contact within the tenancy agreement. The Landlord advised that he understood C.L. and M.P. were a couple when they moved in to the rental unit. I find that C.L. has been a tenant within the rental unit since April 1, 2020. Despite not being listed as a tenant, the C.L. is listed as a contact for the tenant. I find that a tenancy exists between the Landlord and C.L. on the basis that the Landlord took no action to remove C.L. after M.P. left the rental unit and accepted rent from C.L.. It was only after C.L. was unable to pay rent did the Landlord take action to end the tenancy.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 26 of the *Act* sets out that a tenant must pay rent in accordance with the tenancy agreement unless they are authorized by the *Act* to deduct all or a portion of their rent. In the present circumstances, rent was not paid in accordance with the Tenancy Agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept the Landlord's undisputed evidence that the Tenant owes the following amount of rent:

Month	Rent Due	Rent Paid	Difference
June 2021	\$750.00	\$450.00	-\$300.00
July 2021	\$750.00	\$0.00	-\$750.00
August 2021	\$750.00	\$0.00	-\$750.00
September 2021	\$750.00	\$0.00	-\$750.00
October 2021	\$750.00	\$0.00	-\$750.00
TOTAL OWED			\$3,300.00

I order that the Tenant pay \$3,300.00 in unpaid rent to the Landlord. In partial satisfaction of the amount owed for unpaid rent, I order pursuant to s. 72(2) that the Landlord retain the security deposit and pet damage deposit, which combined total \$750.00.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice to End Tenancy signed June 14, 2021. I grant the Landlord an order for possession pursuant to s. 55. The Tenant shall give vacant possession of the rental unit no later than **two (2) days** after being served with the order.

As the Landlord was successful on their application, they are entitled to a return of the filing fee. Pursuant to s. 72(1), I order the Tenant pay \$100.00 to the Landlord for their filing fee.

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$2,650.00** to the Landlord as follows:

Item	
Unpaid rent	\$3,300.00
Return of filing fee	\$100.00
Withhold security deposit and pet damage deposit	- \$750.00
TOTAL	\$2,650.00

It is the Landlord's obligation to serve these orders on the Tenant.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an

order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 19, 2021

Residential Tenancy Branch