



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, OLC, RR, FFT, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Application) under the *Residential Tenancy Act* (the *Act*), on July 14, 2021, and an Amendment to the Application (the Amendment) filed on July 27, 2021, seeking:

- Cancellation of two 10 Day Notices to End Tenancy;
- Cancellation of a One Month Notice to End Tenancy;
- Repairs to the rental unit;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on November 15, 2021, at 11:00 AM and was attended by Tenant W.K., their spouse J.A., who is also the owner of the rental unit, and an agent for the Tenant N.H., who is the Tenant's parent. All testimony provided was affirmed. The hearing was subsequently adjourned as N.H. provided affirmed testimony that the Tenant was unexpectedly hospitalized at the time of the hearing and therefore could not attend the hearing or provide an agent with relevant information in order to attend the hearing and make arguments and submissions on their behalf in relation to the Application and Amendment. An Interim Decision was made on November 16, 2021, and the reconvened hearing was set for November 22, 2021, at 9:30 AM. A copy of the Interim Decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch), by email, as agreed to at the hearing.

The hearing was reconvened by telephone conference call on November 22, 2021, at

9:30 AM and was attended by the Landlord W.K. and their spouse J.A. both of whom attended on time and ready to proceed. No one appeared on behalf of the Tenant. At the hearing on November 15, 2021, I advised the parties of the date and time of the reconvened hearing, confirmed how they wished to receive a copy of the new Notice of Hearing from the Branch, and clearly advised them that if they had not received the new Notice of Hearing from the Branch by Thursday November 18, 2021, they were required to contact the Branch in order to obtain the reconvened hearing information. This was also communicated to the parties in the Interim Decision. Records at the Branch indicate that no contact was made by the Tenant or an agent acting on their behalf, between the time of the original hearing and the time of the reconvened hearing.

Further to the above, I explained to the parties at the original hearing and in the Interim Decision, that the reconvened hearing would proceed as scheduled unless it was rescheduled in advance by them in accordance with rule 5.1 of the Rules of Procedure or an adjournment was granted to either party at the reconvened hearing. I cautioned the parties that the hearing would only be adjourned again under exceptional circumstances, even if the Tenant was not yet well enough to attend, as the Tenant is entitled to appoint another person to represent them at the reconvened hearing, such as an agent, advocate, lawyer, friend, or family member, in accordance with rule 6.7 of the Rules of Procedure. I therefore strongly encouraged the Tenant to appoint someone to attend and present evidence and testimony at the reconvened hearing regarding the substantive issues set out in the Application and Amendment if the Tenant was incapable of attending the reconvened hearing on their own behalf. I also cautioned them that a failure to do so would likely result in the commencement of the reconvened hearing as scheduled, and the rendering of a decision in relation to the Application and Amendment, despite the absence of the Tenant or an agent acting on their behalf.

The parties were also advised at the original hearing and in the Interim decision that documentation substantiating the need for any further adjournments would be required and that such documentation must be before me at the time of the adjournment request. Despite these cautions at the original hearing and in the Interim Decision, no one appeared at the reconvened hearing on the Tenant's behalf, no documents were submitted regarding the need for a further adjournment, and records at the Branch show that no attempts were made by the Tenant or an agent for the Tenant to contact the Branch either to obtain information regarding the reconvened hearing, or to request that the hearing be rescheduled or adjourned. Further to this, although the Tenant was ordered to submit documentation substantiation their hospitalization at the time of the original hearing, or to have such documentation submitted on their behalf, no such

documentation was either served on the Landlord or submitted to the Branch for consideration as ordered.

In contrast, the Landlord complied with my order in the Interim Decision that they provided me with a copy of an email sent to them by the Tenant, which demonstrates to my satisfaction that prior to the hearing, the Tenant made statements that they would delay enforcement of any decision rendered by the Branch regarding possession of the rental unit, if the Landlord did not agree to settle matters with them outside of the dispute resolution process. As a result of this email, the Tenant's failure to attend either hearing, the Tenant's failure to appoint an agent to act on their behalf at the reconvened hearing, and the Tenant's failure to submit evidence of their hospitalization at the time of the original hearing as ordered, I have serious concerns that the Tenant is intentionally attempting to delay resolution of the matter relating to possession of the rental unit by failing to appear at the reconvened hearing and/or failing to appoint an agent to attend on their behalf.

Based on the above, and as I verified that the hearing information contained in the Notice of Hearing sent to the Tenant by the Branch in the manner requested by their agent at the original hearing is correct, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rules 7.1 and 7.3 of the Rules of Procedure. The Landlord and the Landlord's spouse were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord and their spouse were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. They were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. They were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Landlord stated that the documentary evidence before me was emailed to the Tenant on November 3, 2021, and that the Tenant confirmed receipt via email on that same date. As there is no evidence or testimony before me to the contrary, and there is documentary evidence before me that the Tenant served the Landlord with the Application, Amendment, and their own documentary evidence by email, I therefore find the documentary evidence was served on the Tenant on November 3, 2021, in

accordance with sections 71(2)(b) and 71(2)(c) of the *Act*. I therefore accept this documentary evidence for consideration.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Although the line remained open for 44 minutes, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration. As a result, and pursuant to rule 7.3 of the Rules of Procedure, I therefore dismiss the Tenant's Application in its entirety, without leave to reapply. Having made this finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to sections 46,47, and 55 of the *Act* and whether the Landlord is entitled to any amount of unpaid rent pursuant to section 55(1.1) of the *Act*.

Although I have reviewed all evidence and testimony before me that I have accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the Landlord, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 or 47, and section 55 of the *Act*?

Is the landlord entitled to a Monetary Order for unpaid rent pursuant to sections 55(1.1) and 67 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the rent in the amount of \$3,200.00 is due on the first day of each month. At the hearing the Landlord stated that this is correct and that the last rent payment made by the Tenant was \$3,000.00 on June 1, 2021. The Landlord stated that as a result, the Tenant was served with the following notices to end tenancy:

- A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the First 10 Day Notice) by email on July 9, 2021, for \$200.00 in rent owed as of June 1, 2021;
- A 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the Second 10 Day Notice) by email on July 9, 2021, for \$3,200.00 owed as of July 1, 2021; and

- A One Month Notice to End Tenancy for Cause (the One Month Notice) by email on July 15, 2021, for late rent payments in May, June, and July of 2021.

The First 10 Day Notice in the documentary evidence before me is signed and dated July 9, 2021, has an effective date of July 17, 2021, is on the Branch form, and states that the tenancy is being ended because the Tenant has failed to pay \$200.00 in rent due as of June 1, 2021.

The Second 10 Day Notice in the documentary evidence before me is also signed and dated July 9, 2021, has an effective date of July 19, 2021, is on the Branch form, and states that the tenancy is being ended because the Tenant has failed to pay \$3,200.00 in rent due as of July 1, 2021.

The One Month Notice in the documentary evidence before me is signed and dated July 15, 2021, has an effective date of August 31, 2021, is on the Branch form, and states that the tenancy is being ended because the Tenant has repeatedly paid rent late. In the details of cause section of the form it states that the Tenant has paid rent late in May, June, and July.

Although no one appeared on behalf of the Tenant at the hearing to provide any evidence or testimony, in their Application they stated that they received the 10 Day Notices on July 9, 2021, at the pre-arranged email, and in the amendment they stated that they received the One Month Notice on July 15, 2021, by email.

The Landlord stated that in May of 2021, the Tenant paid their rent late in 2 installments, with the first payment being \$1,500.00 on May 5, 2021, and the second payment being \$1,700.00 on May 6, 2021. The Landlord stated that the Tenant was subsequently short \$200.00 in rent for June 2021, when they only paid \$3,000.00 on June 1, 2021, and that despite the fact that the Tenant still resides in the rental unit, the Tenant has made no further rent payments since June 1, 2021. As a result, the Landlord stated that the Tenant currently owes \$16,200.00 in outstanding rent as follows:

- \$200.00 for June 2021; and
- \$3,200.00 per month for July-November 2021.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for consideration or to point to any documentary evidence before me.

Analysis

Based on the tenancy agreement in the documentary evidence before me, I am satisfied that a tenancy to which the *Act* applies exists between the parties and that rent in the amount of \$3,200.00 is due on the first day of each month. Based on the Landlords uncontested and affirmed testimony, I am also satisfied that the last rent payment made by the Tenant was \$3,000.00 on June 1, 2021.

Section 46 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 and that a notice under this section must comply with section 52 of the *Act* with regards to form and content.

Based on the Landlord's affirmed testimony and the statements made by the Tenant in the Application and Amendment, I am satisfied that the Tenant received both the First 10 Day Notice and the Second 10 Day Notice by email on July 9, 2021, and that they received the One Month Notice by email on July 15, 2021. Pursuant to sections 70(2)(b) and 71(2)(c) of the *Act*, I therefore find that the Tenant was served with the above notices to end tenancy on those dates.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. I am satisfied that the Tenant disputed the 10 Day Notices on time and therefore the conclusive presumption provisions set out under section 46(5) of the *Act* do not apply. Having made that finding, I will now turn my mind to whether the Tenant owed rent at the time either 10 Day Notice was served, and if so, whether the outstanding rent was paid within 5 days after service of the 10 Day Notices on the Tenant. Based on the uncontested affirmed testimony of the Landlord, I am satisfied that the Tenant last paid rent on June 1, 2021, in the amount of \$3,000.00. As there is no evidence or testimony before me from the Tenant that they had a right under the *Act* to deduct the rent, I am therefore satisfied that the Tenant owed the amounts shown on each of the 10 Day Notices and that they did not pay these overdue rent amounts at all, let alone within 5 days after receiving the 10 Day Notices.

Based on the above, and as I am satisfied that both the First 10 Day Notice and the Second 10 Day Notice comply with the form and content requirements set out under

section 52 of the *Act*, I therefore find that the Landlord had grounds to end the tenancy under section 46 of the *Act*. Given this finding, I do not find it necessary to make any findings of fact or law in relation to the One Month Notice.

Pursuant to section 68(2) of the *Act* and Residential Tenancy Branch Policy Guideline (Policy Guideline) #3, I therefore find that the tenancy ended on November 22, 2021, the date of the reconvened hearing. Pursuant to section 55(1) of the *Act*, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant. Pursuant to sections 55(1.1) and 67 of the *Act* and Policy Guideline #3, I also grant the Landlord a Monetary Order for outstanding rent in the amount of \$15,346.67; \$13,000.00 in outstanding rent for the period of June 1, 2021-October 31, 2021; and \$2,346.67 in per diem rent for November 1, 2021-November 22, 2021, the date I have ordered that the tenancy ended.

The Landlord remains entitled to file an Application for Dispute Resolution against the Tenant seeking compensation for overholding the rental unit between November 23, 2021, and the date the Tenant vacates or abandons the rental unit, pursuant to section 57(3) of the *Act*, in addition to any lost rent suffered after that period, if applicable, should they wish to do so.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **Two Days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$15,346.67**. 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 Branch under Section 9.1(1) of the *Residential Act*.

Dated: November 24, 2021

Residential Tenancy Branch