



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR (x2), OLC, MNDCT, DRI, RP, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on June 27, 2021:

- a. to dispute a One Month Notice to End Tenancy for cause (the “One-Month Notice”);
- b. to ensure the landlord’s compliance with the legislation and/or the tenancy agreement;
- c. a return of the Application filing fee.

On June 29, 2021 they amended their Application:

- d. to dispute a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) served by the landlord on June 28, 2021;

On July 14, 2021, they amended their Application:

- e. to dispute a 10 Day Notice to End Tenancy for Unpaid Rent served July 6, 2021;
- f. to dispute a rent increase that is above the amount allowed by law;
- g. for compensation for monetary loss or other money owed;

On October 9, 2021 they amended their Application again

- h. for repairs to the rental unit, after contacting the landlord to do so.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 29, 2021. Both the landlords (hereinafter the “landlord”) and the tenants (the “tenant”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matters

At the outset, I advised both parties of the immediate issues concerning the Notices to End Tenancy issued by the landlord. These are:

- a. the One-Month Notice delivered by the landlord on June 17, 2021;
- d. the 10-Day Notice delivered by the landlord on June 28, 2021;
- e. the 10-Day Notice delivered by the landlord on July 6, 2021.

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the landlord. By Rule 6.2, I do not consider the other issues listed above, with the exception of c. reimbursement of the Application filing fee. By Rule 2.3, I find the other issues are unrelated and I amend the tenants' Application to exclude these matters. The tenant has leave to reapply on the other grounds. This means the tenants may file a new and separate application to address the other issues.

Issues to be Decided

Is the tenant entitled to a cancellation of the June 28, 2021 10-Day Notice?

Is the tenant entitled to a cancellation of the July 6, 2021 10-Day Notice?

Is the tenant entitled to a cancellation of the June 17, 2021 One-Month Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the tenant entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion below are set out in this section.

The tenant provided the copies of the tenancy agreement and associated messaging that they have. An earlier tenancy agreement with a previous landlord started on November 15, 2007. The tenant paid rent increases over the course of the tenancy on a regular basis through to 2019. The tenant submitted a copy of the final rent increase from the previous landlord, signed by that person on January 30, 2015. This was for a rent increase to \$743 starting on May 15, 2015.

The landlord here took over in summer 2015. There is reference to this in the tenant's evidence in the form of an itemized list of renovations and repairs dated August 10, 2015.

The landlord signed a new tenancy agreement on June 1, 2016 and the tenant signed this same agreement on June 9, 2016. This document appears in both parties' evidence. An email from June 8, 2016 shows the landlord asking the tenant to sign this new rental agreement. This shows the tenancy renewing for June 1, 2016 on a month-to-month basis. The rent set in the agreement is \$765 per month, payable on the 1st of each month.

The landlord issued a 10-Day Notice on June 28, 2021. Both parties in the hearing agreed this was because of an error where the rent was placed into the wrong account. The tenant and landlord together rectified this discrepancy, and this in effect cancelled this 10-Day Notice. The tenant provided a record of monthly rent paid for June, showing a bank transfer confirmation on June 4, 2021. Also, a message from the landlord to the tenant – reproduced in the tenant's evidence – shows the landlord admitting this was the fault of their bank.

The landlord issued a 10-Day Notice on July 6, 2021. A copy of this appears in both parties' evidence. This gives the end-of-tenancy date, on which the tenant must move out, as July 24, 2021. Page 2 of the document shows the landlord's indication that the tenant failed to pay rent for \$815 due on July 1, 2021.

In the hearing, the tenant explained their position on this rent issue for July 1, 2021. As they reviewed all matters of this tenancy after they made their initial Application on June 27, they understood they were paying too much in rent over the years. This was due to rent increases in the past that were over the allowable legal limit. They made calculations for the years prior and calculated what should be the actual amount of legal rent increase, versus what they actually paid for increased rent imposed by their prior and then current landlord.

Adding these up, by the number of months they paid under each rent amount, they yielded a grand total – from 2014 through to 2019 – of the amount almost equal to one full month's current rent in 2021. Because of this, they withheld this amount and did not pay rent for the month of July 2021. After this non-payment, the landlord issued the 10-Day Notice on July 6, 2021. After they received this 10-Day Notice, the tenant amended their claim to contest this, on July 14, 2021.

In the hearing, the tenant provided that “technically, the month of July was paid due to the fact that we were overcharged with rent increases in the past.” They informed the landlord of this via email and gave a breakdown of the calculation to the landlord to show them. This was in late June. They presented that the realistic rent amount – following correct allowable rent increase amounts for years past – should be \$804.33.

The tenant provided a record of rent increased from 2014 onwards:

date	rent amount	legal % increase	actual charged	should be	overcharged
05/15/2014	\$700	2.2%	\$721	\$715.40	\$5.60 @ 12 months
5/15/2015	\$721	2.5%	\$743	\$733.28	\$9.72 @ 12 months
6/1/2016	\$743	2.9%	\$765	\$754.54	\$10.46 @ 24 months
6/1/2018	\$765	4.0%	\$795	\$784.72	\$10.28 @ 12 months
6/1/2019	\$795	2.5%	\$815	\$804.33	\$10.67 @ 24 months

Multiplying the overcharged amounts for each year, the tenant arrived at the amount of \$814.32.

The landlord submitted a copy of the rent increase signed on February 6, 2019. This was for the amount increase from \$795 to \$814.85, effective June 1, 2019. Additionally, there is a notice of rent increase signed by the landlord dated February 29, 2016 showing the increase from \$743 to \$765, taking effect on June 1, 2016.

In the hearing, the landlord stated they did not disagree with the tenant that the rent amount was increased more than the *Act* allows for. They maintained their position that the tenants did not pay rent for July 2021: what the tenant presented as illegal rent increases in the past does not warrant the non-payment of rent. The landlord had notice of this verbally from the tenants in June 2021. In their records, the landlord submitted confirmation of bank deposits following this, of \$804.33 for each of August, September, and October 2021.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Acts*. 43(5) states: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In determining whether the landlord's issuance of the following July 6 notice is warranted and justified under law, I shall examine: a) what the rent amount was at the time of its' issuance, and b) whether the tenant was entitled to deduct from that rent amount.

In reviewing the tenant's calculations for rent increases from 2014 onwards, I find the rent amount was agreed to by both parties in 2016. This is as the parties signed in the tenancy agreement, with the landlord signing on June 1, and the tenant signing on June 9. I find this was not an unlawful rent increase; rather, the tenant signed the agreement that specified this rent amount.

I find the tenant is correct in their finding that the previous landlord overcharged them prior to 2016. There is evidence the current landlord raised the rent in early 2016 and issued notice of this to the tenant. Although more importantly after this the landlord presented a tenancy agreement to the tenant in mid-2016 and they signed. This stands as their agreement to the rights and obligations set out in that tenancy agreement. That includes the rent amount.

Because the tenant signed the tenancy agreement, they are thereby prevented from asserting their rights on rent increases in the manner they have done here, by withholding rent. This is because they agreed to that \$765 by law. Moreover, it was not the landlord here who imposed unlawful rent increases. On my review I find the current landlord increased rent only in accordance with the yearly allowable rate as the tenant put forth in their evidence. This was

after the tenant agreed to \$765 going forward in 2016. They signed the agreement, making them fully aware of the amount going forward.

The whole amount of \$815 is correct, in line with the 2016 tenancy agreement and what the *Act* prescribes for yearly rent amount increases. The tenant may take up the issue with the previous landlord for the recompense of rent amounts overcharged. Based on what they provided in their calculation, this is a total amount of \$183.84, recoverable from that previous landlord.

The tenant is still obligated to pay rent under their tenancy agreement and have no right to reduce any amount of rent. The *Act* s. 43(5) does not apply. For July 2021, the tenant failed to pay the full amount of rent they owed. Non-payment by the tenant constitutes a breach of the tenancy agreement and a breach of s. 26.

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlord issued the 10-Day Notice on July 6, 2021 the tenant had an extant amount of rent owing. They did not pay the rent amount owing within 5 days. Because of this, and because I do not accept their submission that they were justified in not paying rent, the tenant's Application to cancel the 10-Day Notice is dismissed. The tenancy is ending.

Under s. 55 of the *Act*, when the tenant's Application to cancel a notice to end tenancy and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. On my review, I find that the 10-Day Notice complies with the requirements of form and content; therefore, the landlord is entitled to an order of possession.

The *Act* s. 55(1.1) specifies that I must grant an order requiring the payment of the unpaid rent. For the purpose of granting repayment of unpaid rent, this is money that is due and owing during the tenancy. As of the date of the hearing, the tenant still occupied the rental unit.

The record shows the tenant paid the following months of August, September, and October at a reduced rent amount of \$804.33. The fact that the landlord accepted these payments from the tenant does not cancel or nullify the 10-Day Notice. The tenant here was an “overholding tenant” and occupied the rental unit after the tenancy legally ended, as defined in the *Act*, s. 57. Compensation for overholding is not considered rent; this occurred after the tenancy legally ended. The landlord must make a separate application for other compensation where the tenant was overholding in the following months of August, September, October and, if applicable, beyond.

In line with this, I award the landlord \$815 with a Monetary Order, for the rent not paid in July 2021.

The validity of the One-Month Notice issued by the landlord on June 17, 2021 is not at issue. I dismiss this part of the tenant’s Application because the tenancy is ending for the reason of unpaid rent. Additionally, both parties agree the 10-Day Notice issued by the landlord on June 28, 2021 is cancelled and of no effect.

Because tenant was not successful on their Application, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the tenant’s Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I grant an Order of Possession to the landlord **effective November 15, 2021 at 1:00pm**. The landlord must serve this Order of Possession to the tenant. Should the tenant fail to comply with this Order, the landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that court.

I order the tenant to pay the landlord the amount of \$815, pursuant to s. 55(1.1) of the *Act*. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: November 1, 2021