



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, MNDCT, RP, RR, DRI

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- more time to apply to cancel an eviction notice;
- an Order cancelling a 10 Day Notice to End Tenancy for Cause dated July 7, 2021 ("10 Day Notice");
- a monetary order of \$500.00 for damage or compensation under the Act;
- an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided; and
- to dispute a rent increase from the Landlord.

However, at the start of the hearing, the Tenant advised that all of his issues have been resolved, except for the 10 Day Notice. Accordingly, I said we would focus on that issue in the hearing. I dismissed the other claims without leave to reapply.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that he received the Notice of Hearing package from the Tenant and

that he had time to review it. However, the Landlord said that he submitted his evidence to the RTB on November 6, 2021, or three days prior to the hearing. Further, he said he did not serve this evidence to the Tenant. Rule 3.15, states: "...the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." As a result of this failure to follow the Rules, I find I cannot consider the Landlord's documentary evidence in making my Decision.

Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application, and the Landlord confirmed this address in the hearing. However, the Tenant said that he does not have an email address; therefore, I advised him that the Decision would be mailed to him. The Parties also confirmed their understanding that the Decision would be sent to both of them in these ways, respectively, and that any Orders would be sent to the appropriate Party.

I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately. They affirmed that they were not recording the hearing.

The Tenant had applied for more time to dispute the 10 Day Notice; however, I find that he applied on time, and therefore, he does not need an extension of the application deadline. This claim is dismissed without leave to reapply.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the tenant's application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for any rent arrears, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 15, 2018, with a monthly rent of \$3,000.00, due on the first day of each month. However, the Landlord advised that he bought the residential property in April 2021, and that the Tenant was initially paying \$3,500.00 per month in rent at that point; however, the Parties agreed that the Landlord lowered the rent by \$500.00 a month in exchange for gaining use of one of the rooms in the basement. The Parties agreed that the Tenant paid the Landlord security and pet damage deposit for a total of \$4,500.00. This deposit would have been transferred to the Landlord with the sale of the residential property by the original landlord.

The 10 Day Notice was signed and dated July 7, 2021, it has the rental unit address, it was served by attaching it to the rental unit door on July 7, 2021, with an effective vacancy date of July 17, 2021, which is automatically corrected to July 20, 2021, by section 53 of the Act. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$3,000.00 in rent that was due to the Landlord on July 1, 2021.

In the hearing, the Landlord said:

The first thing is I bought [the residential property] in April 2021; the first month he gave me the cheque. The next month is May rent; he said, 'I will give you in 10 days. And he paid me \$2,000.00 on May 20, but just on end of May the rest.

June rent he gave me in July then the deposit in July he gave me was NSF. August, September through October - I tried to cash his cheques - but there was nothing there. The bank said no money.

The last five to six months, he is buying time to dispute my 10 Day Notice. On Saturday, he called me to ask if I wanted to cancel the dispute. I said no. I don't want to keep this tenant; I need possession.

The Tenant said:

He came to my house three days ago; I gave him \$3,000.00 cash. I said, "the rest I will give to you this coming Friday.'

I asked the Tenant about whether he has failed to pay rent, as the Landlord claims in his testimony. The Tenant said:

Covid slow down. I told him I will get up to date this coming Friday rent, and there will be no more problems. Maybe we will give him notice anyway to move in January. I acknowledge that haven't paid rent on time. Work was slow.

The Landlord said:

Unpaid rent – he owes me the last rent. He still owes me September, October, and November. He says, 'I will pay in 10 days, I will pay in 15 days...'. My request is to please leave and give me the possession.

The Tenant said:

I just owe him rent for two months, not three. Only August and September. He came to my house and I paid him \$3,000.00 cash – that was for before August. I paid him the July month then.

I asked the Tenant about other months for which the Landlord claims the Tenant has failed to pay rent.

August?

August and September – two months rent.

October?

Yes, I paid him, only August and September.

November?

October and November - two months rent due, because I paid August and September. Only October and November due.

The Landlord said:

On Sunday he paid \$3,000.00 for August and then cheques for September and October, but nothing for November. And the Bank said there is no money for it, so September and October and November. He said he will pay five months rent, '...because you had a problem with the bank', but he didn't pay for that. September, October, November – \$3,000.00 each

The Tenant said:

I gave him \$3,000.00 for September – I paid him \$3,000.00, and I asked how much is due. I gave him September rent \$3,000.00. He should know.

He came to my house. I told him how much rent is due now? Three months and I gave him \$3,000.00 and no receipt. October and November rent due, I said I will pay that Friday, and I will give him more if needs it.

The Landlord replied: “The \$3,000.00 was for the month of August.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) 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.

. . .

I reviewed the Tenant's relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on July 10, 2021, three days after it was attached to the rental unit door.

Section 26 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 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. In the hearing, the Landlord said that he was owed \$9,000.00 in unpaid rent as of November 1, 2021. However, the Tenant said he owes only \$6,000.00, or two-months' rent.

When I consider all of the testimony before me on this matter, I note that the Tenant gave conflicting evidence as to which months he has paid rent, and for which months he owes the Landlord \$3,000.00. The Tenant initially said:

I just owe him rent for two months, not three. Only August and September. He came to my house and I paid him \$3,000.00 cash – that was for before August. I paid him the July month then.

When I asked the Tenant about whether he had paid his November 2021 rent, he said:

October and November - two months rent due, because I paid August and September. Only October and November due.

This internally inconsistent testimony raises questions in my mind about the reliability and credibility of the Tenant's evidence. Rather, I find that the Landlord provided internally consistent evidence about how much the Tenant has owed him since May 2021 to the present. I find it more likely than not that the Tenant owes the Landlord rent for September, October, and November 2021 of \$3,000.00 per month for a total owing of \$9,000.00. I, therefore, award the Landlord **\$9,000.00** from the Tenant for the rent arrears in this tenancy, pursuant to sections 55 (1.1) and 67 of the Act.

Based on the evidence before me overall, I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant said that the reason for his ongoing inability to pay the rent was because he was having trouble with work, because of the pandemic. However, the Tenant did not direct me to any evidence establishing that he had a right under the Act to deduct all or a portion of the \$3,000.00 in rent owed for September, October, and November 2021. As a result, I dismiss the Tenant's Application to cancel the 10 Day Notice without leave to reapply, pursuant to sections 46 and 62 of the Act.

I also find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The effective date of the 10 Day Notice has passed, and I have found that

the Tenant has not paid rent for the last three months; as a result, I find that the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security and pet damage deposits. These deposits total \$4,500.00, which the Landlord is authorized to retain in partial satisfaction of the Landlord's monetary award, pursuant to section 72 of the Act. I grant the Landlord a **Monetary Order of \$4,500.00** for the amount of arrears remaining after deducting the security and pet damage deposits.

The Landlord is granted an **Order of Possession**, which will be **effective two days** after it is served to and received by the Tenant.

Conclusion

The Tenant is unsuccessful in his Application. All of the Tenant's claims, other than for an Order to cancel the 10 Day Notice, are dismissed without leave to reapply, as the Tenant said in the hearing that those issues have been resolved with the Landlord.

The Tenant acknowledged he has not paid rent for at least two months, although I found it to be for the last three months. As a result, and pursuant to sections 26 and 46, I dismiss the Tenant's Application to cancel the 10 Day Notice without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded **\$9,000.00** in rent arrears from the Tenant. The Landlord is authorized to retain the whole amount of the Tenant's security and pet damage deposits in partial satisfaction of this award. I grant the Landlord a **Monetary Order** under sections 46, 55 (1.1), and 67 of the Act from the Tenant in the amount of **\$4,500.00** for the remaining monetary award owing by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 09, 2021

Residential Tenancy Branch