



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPR-DR, MNR-DR, FFL
For the Tenants: CNR-MT, RR

Introduction

On October 21, 2021 the Tenants, applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlord. The Tenant also applied for more time to make their Application, and a reduction in rent for repairs, facilities, or services agreed upon but not provided.

On October 24, 2021 the Landlord applied for an order of possession of the rental unit, and recompense of unpaid rent amounts. Additionally, they applied for reimbursement of their Application filing fee. The Landlord filed this as a Direct Request; however, this application cannot be considered by that method when there was a prior extant request from the Tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 23, 2021. The Landlord, one of the named Tenants, and a representative for the other named Tenant (not present) attended the hearing.

Preliminary Matters

- At the start of the hearing, the single Tenant in attendance stated they provided the notice of their Application and this hearing to the Landlord via registered mail. They stated this included their prepared evidence including photos. The Landlord confirmed they received this notice; however, there were no pictures in the Tenant’s evidence they received.

I advised the parties at the outset of the hearing that I may order a separate disclosure from the Tenant to the Landlord, depending on the scenario and the way the Tenant chose to rely on that evidence in the hearing. On any relevant piece -- that is, photo evidence -- I would decide whether the Landlord needed opportunity for review. This is an application of the *Residential Tenancy Branch Rules of Procedure* Rule 3.17 and based on my finding that the Tenant did not provide photos to the Landlord with their initial notice.

The Landlord provided the notice of their Application and their evidence to each of the two Tenants, via registered mail to each. The Tenant who attended maintained their received no notice of this hearing from the Landlord and could not identify specific pieces of the Landlord's evidence.

Given that the Landlord provided photos of each evidence package they prepared, and the specific registered mail tracking number for each package, I find they completed service as required for this hearing. The packages, with reference to the tracking numbers provided by the Landlord, were unclaimed by the Tenants, and returned to the Landlord at the beginning of December.

The Landlord also provided that they served documents in person on December 8, 2021. The Tenant who attended denied they received evidence from the Landlord. The Landlord provided a signed written statement from a neighbour who witnessed that in-person delivery.

I find it more likely than not that the Landlord was aware of the need for actual service in this hearing process. The representative for the Tenant who did not attend stated under oath that they only found out about the hearing on December 16th. The Tenant who attended was evidently not informing the other absent Tenant about this hearing. This strains the credibility of the Tenant who attended the hearing on all points regarding their receipt of the Landlord's evidence.

Given the Landlord showed proof of service in the form of registered mail information, and a witness attesting to their observation of service in-person to the Tenants, I find it more likely than not the Landlord advised the Tenants of this hearing as required. I also find the Tenant who attended the hearing had received the Landlord's evidence.

- 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 hearing 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 the 10-Day Notice issued by the Landlord on October 15, 2021. I find the Tenant’s claim for a reduction in rent is an unrelated issue; therefore, I dismiss this part of their Application with leave to reapply.

- The Landlord filed their Application for rent amounts owing. In their prepared Monetary Order Worksheet that they disclosed to the Tenant they included amounts for utilities, and an amount for repair of the deck. Because the Landlord did not amend their Application to include utility amounts or other money owing, and these did not form the basis for the Landlord issuing the 10-Day Notice, I dismiss these pieces of the Landlord’s claim with leave to reapply. These matters were not discussed in the hearing and I have not reviewed the Landlord’s evidence. In line with the 10-Day Notice, I focus only on rent amounts owing herein.

Issues to be Decided

- Is the Tenant entitled to a cancellation of the 10-Day Notice?
- If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. This establishes that the tenancy started on September 1, 2021. The rent amount in the agreement is \$2,800. The Tenants paid a security deposit of \$1,400 on August 26, 2021.

The Landlord issued the 10-Day Notice on October 13, 2021, for a move-out date of October 22, 2021. This was for the amount of \$2,800, being the full amount of October rent that was

due on October 1, 2021. They attached this document to the door of the rental unit as shown in the photos of this they provided with their witness. The Tenant in the hearing stated they received this document “days later” closer to the following weekend. It was not on the door; rather, it was “ripped off and in pieces”.

The Landlord testified they received \$790 for rent on October 8, 2021. This is shown in an image of the e-transfer on that date. This was less than the full amount of October rent; therefore, they issued the 10-Day Notice after multiple excuses from the Tenant. At the time they made their Application, the amount of rent owing was \$2,010. After this, they received \$1,400 for rent in November, and no rent for December.

The Tenant stated they paid another \$500 to the Landlord in October, “and the rest of it”. They thought this was the same in November. The Tenant admitted they did not pay any rent in December because of work they completed for the Landlord that they properly felt they were owed for compensation. This is the full amount of rent withheld for the month of December. The Landlord claims the total amount of rent owing, for \$6,210.

In the hearing, the Tenant stated they paid, though never received receipts from the Landlord to prove it. The Landlord countered this and pointed to an image in their evidence showing a printed receipt attached to the door of the rental unit, dated November 2, for \$1,400.

Analysis

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

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 a 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.

On review, I find there was a valid tenancy agreement in place between the parties. This specifies the amount of \$2,800 to be paid on the first of each month. There is no provision for

deductions on other work completed by the Tenants, or otherwise arranged between the parties.

I find the Tenant did not make the required full rent payment on October 1, 2021. The Landlord issued the 10-Day Notice on October 13 and served it to the Tenants by attaching it to their door. Evidence that the Tenants received this document by this method of service is the fact that they applied for dispute resolution. As per s. 90(c), I deem the effective service date of this document to be October 18, 2021, making the Tenant's Application on October 21, 2021 within the five-day timeframe.

The Tenants did not pay the full amount within the 5-day timeframe as indicated on the 10-Day Notice. The Tenant in the hearing did not provide sufficient detail or evidence of when they made subsequent payments to cover that full month rent for October. This also carried over into the following month and the Tenant did not provide evidence showing their payment in November giving that full-month rent. I find the outstanding rent amount, as provided by the in the hearing is \$2,010 for the month of October, and \$1,400 for the month of November.

The Tenant in the hearing admitted they paid no rent for December. That is an outstanding amount of \$2,800. The Tenants have no right to automatic rent deduction or the right to withhold rent payment where they feel they are owed some money by the Landlord. There is no provision for that in the *Act* and no statement setting out such a right in the tenancy agreement. Nor was there any agreement from the Landlord for this work completed. The Tenants had no legal reason to withhold rent.

For these reasons, I find the 10-Day Notice issued by the landlord on October 13, 2021 is valid. I dismiss the Tenants' Application to cancel the 10-Day Notice. The tenancy will end for this reason.

Under s. 55 of the *Act*, when a tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied document complies with the requirements under s. 52 regarding form and content, I must grant the Landlord an order of possession.

I find the 10-Day Notice, as issued, complies with the requirements of form and content; therefore, the Landlord is entitled to an order of possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring payment of the unpaid rent. As per the 10-Day Notice, minus any evidence showing payment thereof, I grant the outstanding amount of \$2,010 to the Landlord with a monetary order.

The *Act* s. 57(3) provides that a Landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I find the evidence establishes the Tenants were overholding up to the date of the hearing. In addition to the above amount, I grant the outstanding amount of rent for \$4,200.

Because the landlord was successful in their Application, by s. 72 of the *Act*, I award the \$100 Application filing fee to them.

It became evident in the hearing that the Tenant who attended remains in the rental unit. The other Tenant, who was represented in the hearing, had moved out on December 19, 2021. As provided for in the *Residential Tenancy Policy Guidelines*, specifically policy guideline 13, co-tenants are jointly and severally responsible for meeting a tenancy agreement's terms. This stated, both named Tenants in this hearing are jointly and severally liable for debts related to this tenancy.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord has established a claim of \$6,310. After setting off the security deposit, there is a balance of \$4,910. I am authorizing the landlord to keep the security deposit amount and award the balance of \$4,910 as compensation for the October - December 2021 rent amounts, and the filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenants' Application for a cancellation of the 10-Day Notice.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 55(1.1) and s. 57(3) of the *Act*, I grant the Landlord a separate Monetary Order for the recovery of the unpaid rent. By s. 72 of the *Act*, I grant the Landlord \$100 for their Application. This amount total is \$4,910. The Landlord must serve the Tenants with this Monetary Order as soon as possible. Should the Tenants fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it may 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: December 29, 2021

Residential Tenancy Branch