



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, RP, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- To cancel a 10-Day Notice to End Tenancy dated October 25, 2021 (the “10-Day Notice”) pursuant to s. 46;
- More time to dispute the 10-Day Notice pursuant to s. 66;
- An order for repairs to the rental unit pursuant to s. 32; and
- Return of their filing fee pursuant to s. 72.

W.O. appeared on his own behalf as Tenant. L.R., the co-tenant, was not present. K.H. appeared on his own behalf as Landlord. S.S., who owns the residential property jointly with K.H., attended with the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised that the Tenants were served with the 10-Day Notice by having it posted to the residential property door on October 25, 2021. The Tenant acknowledges receipt of the 10-Day Notice. However, the Tenant is unable to confirm when the 10-Day Notice was received. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenants received the 10-Day Notice on October 28, 2021.

The Tenant advises that the Landlord was served with the Notice of Dispute Resolution and evidence by way of registered mail sent on November 6, 2021. The Landlords acknowledge receipt of the application materials. I find that the Notice of Dispute Resolution and the Tenants’ evidence was served in accordance with s. 89 of the *Act*.

Pursuant to s. 90 of the *Act*, I deem that the Landlords received the Tenants' application materials on November 11, 2021.

The Landlord advises that the Tenants were served with their response evidence by way of registered mail sent on December 6, 2021. The Tenant acknowledges receipt of the Landlords responding materials but says that it was received two to three days before the hearing. The Landlord provides a tracking receipt, which shows the package was delivered on December 7, 2021, which is in compliance with the service timeframe contemplated under Rule 3.15 of the Rules of Procedure. I find that the Landlords response evidence was served in accordance with s. 89 of the *Act* and was received by the Tenants on December 7, 2021 as evidenced by the tracking information provided by the Landlord.

Preliminary Issue – Style of Cause

The Tenants have listed two occupants of the rental unit within the style of cause. The *Act* applies to residential tenancies and specifically the parties to tenancy agreements, being landlords and tenants. The *Act* does not apply to third-party occupants of a rental unit.

Accordingly, I amend the style of cause to remove the name of the two occupants of the rental unit. The style of cause will reflect the two tenants named within the tenancy agreement.

Preliminary Issue – Tenants' Application for More Time

The Tenants seek more time to dispute the 10-Day Notice pursuant to s. 66 of the *Act*.

Pursuant to s. 66, the director may extend any time limit imposed by the *Act* but only under exceptional circumstances. In cases involving 10-day notices to end tenancy, such extensions are only permitted if it is agreed to by the Landlord or when the tenant deducted rent believing the deduction was allowed for emergency repairs or under an order of the director.

Pursuant to Rule 2.6 of the Rules of Procedure, an application is considered to have been made when the application and application fee or the fee waiver is received by the Residential Tenancy Branch. Here, the Tenants paid their fee on October 28, 2021 but their application was processed on November 3, 2021. Section 46(4) requires a tenant

to dispute the 10-Day Notice within 5 days of receiving it, in this case on November 2, 2021.

Upon review communication between the Tenants and the Residential Tenancy Branch, I see that an initial application was made by the Tenants on October 28, 2021, which included a claim for emergency repairs under s. 33. However, an email was sent by the Residential Tenancy Branch on October 28, 2021 notifying that the Tenants application needed to be changed before it could be processed on the basis that the application did not qualify as an emergency repair, which would have resulted in an expedited hearing. The Tenants corrected their application on November 3, 2021 for a claim for repairs under s. 32 of the *Act*.

I find that the Tenants clearly demonstrated their intention to file their application on October 28, 2021. I further find that their application was received and application fee paid on October 28, 2021. The processing issue, particularly the technical distinction under s. 33 for emergency repairs, which proceeds by way of expedited hearing under Rule 10, and s. 32 for standard repairs, does not change the fact that the Tenants did, in fact, file their application to dispute the 10-Day Notice on October 28, 2021.

Accordingly, the Tenant's application to dispute the 10-Day Notice is not necessary as they filed their dispute on October 28, 2021, which is within the 5-day time limit permitted imposed by s. 46(4).

Preliminary Issue – Tenants' Claim

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we are able to address disputes in a timely and efficient manner.

Here, the Tenants apply to cancel the 10-Day Notice and seeks an order for repairs. I find that these two claims are not sufficiently related and that the primary issue is whether the tenancy continues or ends based on the 10-Day Notice. Accordingly, I dismiss the Tenants claim under s. 32 of the *Act* as it is not sufficiently related to the claim to cancel the 10-Day Notice.

Further, the claim for repairs may be relevant in the event that the tenancy ends. Given this, if the tenancy ends, the Tenants' claim under s. 32 will be dismissed without leave to reapply. If the 10-Day Notice is cancelled and the tenancy continues, it will be dismissed with leave to reapply.

Issue(s) to be Decided

- 1) Whether the 10-Day Notice should be cancelled?
- 2) Is the Landlord entitled to an order for possession?
- 3) Is the Landlord entitled to an order for unpaid rent?

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 parties confirmed the following details of the tenancy:

- The tenancy began on March 1, 2021.
- Rent of \$2,650.00 was due on the first day of each month.
- The Landlord holds a security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence. The tenancy agreement shows that rent does not include utilities, for which the Tenants are responsible.

The Landlord submits that the 10-Day Notice was issued after several months in which the Tenants paid partial rent or failed to pay rent at all.

The Landlord submits that the Tenants failed to pay rent as follows:

- June 1, 2021 – No rent paid and made partial payment of \$1,900.00 received by way of e-transfers on June 23, 2021.
- July 1, 2021 – No rent paid.
- August 1, 2021 – No rent paid and partial payment of \$1,000.00 received by way of e-transfer on August 25, 2021.
- No rent received at all for September, October, November, and December 2021.

The Tenant denies this and says that rent was paid in full for June, July, and August 2021. The Tenant says that rent was partially paid in cash and that the Landlord failed

to provide the Tenants with receipts for these cash payments. The Tenant also says that the 10-Day Notice has white-out and that the claim for rent was revised from \$2,650.00 to \$10,350.00 as listed in the 10-Day Notice submitted into evidence.

The Landlord denies that the Tenant paid in cash for June, July, and August as alleged by the Tenant. They point to messages written by L.R. within the e-transfers sent to the Landlord, which I reproduce below:

- June 23, 2021 – Will have the remaining \$1600 from this month on Friday. Will have the remainder owing on the 25th. Will have full months rent for July on the first. Sorry for the inconvenience. With the transition between jobs we got behind.
- August 25, 2021 - Will send the reminder (sic) on Tuesday I apologize for the inconvenience.

The Landlord also points to text messages that between he and L.R. as evidence that the Tenants were behind on their rent as they say.

The Tenant acknowledges that rent was not paid for September, October, November, and December 2021. He says that it was not paid on the basis that the Landlord had failed to repair certain items. In particular, he notes water leaking from an upper floor shower, cold water in a lower floor shower, a stove and fridge that needed repaired, and a washing machine that was to be removed. The Landlords says they were only notified of these issues on October 7, 2021, which the Tenant denies. The Tenant says that he or J.R. did not pay for any repairs but mentions that he had to purchase a mini-fridge in August 2021 due to these issues. The mini-fridge cost \$50.00.

The Landlord also lists an amount of \$741.88 for unpaid utilities in the 10-Day Notice. The Landlord arrived at this amount after pro-rating the amount due for municipal services as per a conversation they had with the municipal billing services. They also point to a text message in August respecting the utility issue. However, the Landlord acknowledges that the bill was only received in early November 2021. The Tenant says he first received notice of the utility claim in the 10-Day Notice itself.

Analysis

The Tenant applies to cancel the 10-Day Notice.

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.

The Tenant himself concedes that rent has not been paid for the months of September through to December 2021 and argues that rent was paid for June to August 2021. On the basis of the Tenant's admission that rent for September and October 2021 was not paid, I find that the 10-Day Notice was properly issued on October 25, 2021.

Accordingly, the Tenants claim that the 10-Day Notice was improperly issued is hereby dismissed.

Under s. 55(1) of the *Act*, where a Tenant's application to cancel a notice to end tenancy is dismissed, an order for possession must be granted to the Landlord if the notice to end tenancy meets the formal requirements of s. 52 are met. I have reviewed the 10-Day Notice and find that it meets the formal requirements of s. 52 of the *Act*. Accordingly, the Landlord's are entitled to an order for possession and they shall have that order.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*. Accordingly, I order under s. 68(2) of the *Act* that the tenancy ends on December 16, 2021, the day of the hearing.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).

2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

None of these apply. The Tenant says certain repairs were not undertaken but did not pay for their repairs as contemplated by s. 33 of the *Act*. Accordingly, the Tenants had no right under the *Act* to deduct or otherwise withhold rent.

Here, I accept the Landlord's evidence that rent was paid as they describe since June 1, 2021. I place significant weight in the messages included by L.R. in the e-transfers that were sent, which indicate that no other rent was paid and that the Tenants had begun to fall behind. The text messages provided by the Landlord verify this to be the case. Further, the Tenants submit no evidence showing cash withdrawals to support their claim that rent was partially paid in cash. I am cognizant of Rule 6.6 which requires the Landlord to prove the 10-Day Notice was properly issued. However, the Tenants are under an obligation to provide evidence to support their allegations. The Tenant raises a bare allegation that rent was paid in cash. In the face of the Tenant's bare allegation, the Landlords have bank records, e-transfers, and text messages evidencing a repeated pattern of non-payment of rent.

I find that the Tenants failed to pay rent as follows:

Month	Rent Due	Rent Paid	Difference
June 2021	\$2,650.00	\$1,900.00	-\$750.00
July 2021	\$2,650.00	\$0.00	-\$2,650.00
August 2021	\$2,650.00	\$1,000.00	-1,650.00
September 2021	\$2,650.00	\$0.00	-\$2,650.00
October 2021	\$2,650.00	\$0.00	-\$2,650.00
November 2021	\$2,650.00	\$0.00	-\$2,650.00
December 2021	\$2,650.00	\$0.00	-\$2,650.00
TOTAL UNPAID RENT			\$15,650.00

The Landlord also claims an amount for unpaid utilities. Section 46(6) permits utilities to be treated as unpaid rent where utility charges owed by the tenant have gone unpaid 30-days after the landlord has provided written demand for their payment. The Landlord

has failed to demonstrate there is a written demand. The Landlord admits that the utility statement was only received in early November 2021, which is after the purported text message demand was made in August 2021. I have reviewed the text message of August 14, 2021, which does not specify the specific amount to be paid and only makes reference that water and hydro were to be paid by the Tenant pursuant to the tenancy agreement. I accept the Tenant's submission that they only became aware of the amount within the 10-Day Notice itself.

As the process contemplated under s. 46(6) of the *Act* has not yet been followed, the utility amount claimed by the Landlord cannot be treated as unpaid rent under s. 55(1.1).

Accordingly, I find that total unpaid rent is \$15,650.00. In partial satisfaction of the amount owed, I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit and pet damage deposit, totaling \$2,650.00, in partial satisfaction in the amount owed by the Tenants.

Conclusion

I dismiss the Tenants claim to cancel the 10-Day Notice. Accordingly, the Landlord is entitled to an order for possession pursuant to s. 55(1) of the *Act*. The Tenants and any occupants are to provide vacant possession of the rental unit within **two (2) days** of receiving the order for possession.

I grant a monetary order to the Landlord in consideration of the following:

Item	Amount
Total unpaid rent pursuant to s. 55(1.1) of the <i>Act</i>	\$15,650.00
Security Deposit to be retained by the Landlord pursuant to s. 72(2) of the <i>Act</i>	-\$1,325.00
Pet Damage Deposit to be retained by the Landlord pursuant to s. 72(2) of the <i>Act</i>	-\$1,350.00
TOTAL	\$13,000.00

I order that the Tenants pay **\$13,000.00** to the Landlord in compensation for the unpaid rent claim.

As the tenancy is over, the Tenants claim for repairs under s. 32 of the *Act* is dismissed without leave to reapply.

As the Tenants were unsuccessful in their application, I dismiss their claim for return of their filing fee pursuant to s. 72(1) without leave to reapply.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do 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 Tenants do 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: December 16, 2021

Residential Tenancy Branch