



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application submitted on September 10, 2021: CNR, CNC, OLC, MNDCT, FFT

Tenant's application submitted on October 19, 2021: CNC, OLC, MNDCT, FFT

Introduction

This hearing dealt with a cross application. The tenant's application submitted on September 10, 2021 pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 07, 2021 (the September 07 Ten Day Notice), pursuant to section 46;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Utilities dated December 14, 2021 (the December 14 Ten Day Notice), pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause dated November 18, 2021 (the November 18 One Month Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, under section 67; and
- an authorization to recover the filing fee, under section 72.

The tenant's application submitted on October 19, 2021 pursuant to the Act is for:

- cancellation of the One Month Notice to End Tenancy for Cause dated October 09, 2021 (the October 09 One Month Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, under section 67; and

- an authorization to recover the filing fee, under section 72.

Tenant JS (the tenant) and landlords PC and JC (the landlords) attended the hearing. Witness for the tenant NM also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that at approximately 1:13 P.M. I allowed the landlords to make their closing statements and they did not make any statement. At 1:14 P.M., when the tenant was making his final statements, the landlords disconnected. The hearing lasted 135 minutes and ended at 1:15 P.M.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – service of the September 10, 2021 application

The notice of hearing is dated September 22, 2021 and it indicates the tenant applied for cancellation of the September 09 Ten Day Notice, an order for the landlord to comply with the Act, and a monetary order for compensation.

The tenant affirmed he served the notice of hearing to both respondents in person on September 23, 2021. PC confirmed receipt of the notice of hearing. JC stated that PC received the notice of hearing and that she did not sign the proof of service of the notice of hearing.

The tenant submitted the amendment form RTB 42T on November 06, 2021 (the November amendment) to dispute a one month notice to end tenancy posted on his door on November 26, 2021: "In my opinion this recent Notice posted on my front door (November 26, 2021/dated) is relevant as it is related to existing, and past attempts by the landlord to try to end my tenancy without cause."

The tenant submitted the amendment form RTB 42T on December 21, 2021 (the December amendment) to dispute the December 14 Ten Day Notice. It states: "I want to dispute another Notice to End Tenancy that I was served and add it to my existing Application for Dispute Resolution".

The tenant testified he served the amendments and the evidence to both landlords in person on January 07, 2022. Later the tenant said he served the December amendment on December 23, 2021.

The landlords confirmed receipt of the January 07, 2022 packages.

Based on the tenant's convincing testimony, I find the tenant served the landlords in person the notice of hearing on September 22, 2021 and the November and December amendments and the evidence on January 07, 2022, in accordance with section 89(1)(a) of the Act.

The tenant confirmed receipt of the landlords' response evidence and that he had enough time to review it. I find the landlords served their response evidence in accordance with section 89 of the Act.

I note that section 55(1) of the Act requires that when a tenant submits an application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

I note that section 55(1.1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Preliminary Issue – service of the October 19, 2021 application

The notice of hearing is dated October 21, 2021. The tenant affirmed he served both respondents in person on October 23, 2021 the notice of hearing and the evidence.

PC confirmed receipt of the notice of hearing. JC stated that PC received the notice of hearing and that she did not sign the proof of service.

Based on the tenant's convincing testimony, I find the tenant served the landlords in person the notice of hearing and the evidence on October 23, 2021, in accordance with section 89(1)(a) of the Act.

The tenant confirmed receipt of the landlords' response evidence and that he had enough time to review it. I find the landlords served their response evidence in accordance with section 89 of the Act.

Preliminary Issue – landlord JC

PC and JC testified that JC is not a landlord. The tenant said that JC is PC's wife, JC represents PC and receives rent on behalf of PC.

The tenancy agreement dated February 2020 indicates the landlord is PC. The rent receipt dated September 01, 2021 is signed by JC.

The Act defines landlord as:

the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
(i)permits occupation of the rental unit under a tenancy agreement, or
(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on the convincing testimony offered by the tenant and the September 01, 2021 receipt, I find that JC has been acting as an agent of the landlord and may be named landlord in these applications for dispute resolution.

Preliminary Issue – Unrelated claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the cancellation of the September 07 Ten Day Notice, October 09 One Month Notice, November 18 One Month Notice and December 14 Ten Day Notices and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notices to end tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy which will be decided upon.

Preliminary Issue – Filing fees

The tenant applied for an authorization to recover the filing fees in both applications. The tenant affirmed he did not pay the filing fees.

The applications for an authorization to recover the filing fees are moot, as the tenant did not pay the filing fees.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an authorization to recover the filing fees.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the September 07 Ten Day Notice?
2. Cancellation of the October 09 One Month Notice?
3. Cancellation of the November 18 One Month Notice?
4. Cancellation of the December 14 Ten Day Notice?

If the tenant's applications are dismissed, are the landlords entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the Notices.

Both parties agreed the tenancy started on February 01, 2020 and the tenant continues to occupy the rental unit. Monthly rent is \$1,500.00, due on the first day of the month. The tenant stated the landlord collected and holds a security deposit (the deposit) of \$750.00. Landlord PC testified the tenant did not pay a deposit. The tenancy agreement was submitted into evidence. It indicates the tenant is required to pay a deposit of \$750.00.

The landlord said he attached the September 07 Ten Day Notice to the tenant's door on September 09, 2021. The tenant confirmed receipt of this Notice on September 09, 2021.

The September 07 Ten Day Notice was submitted into evidence. It indicates the tenant failed to pay rent in the amount of \$750.00 due on September 01, 2021. The effective date is September 17, 2021.

The tenant affirmed JC received rent of \$1,500.00 on September 01, 2021, signed the receipt, and paid the tenant \$750.00 for a repair service.

The receipt dated September 01, 2021 states: "rent paid in full for September. Signed JC. Cash: \$750.00. Invoice \$750.00"

JC stated that she received the payment, signed the receipt, counted the money and concluded that the tenant only paid \$750.00. JC then wrote in the receipt "Cash: \$750.00. Invoice \$750.00".

PC testified the tenant said he would complete repair service and not charge the landlords for this service. PC did not authorize the tenant to overhold rent. JC affirmed she is not sure if the tenant conducted repair service.

PC stated the tenant disputed the September 07 Ten Day Notice 15 days late.

Both parties agreed the landlord served the October 09 One Month Notice and the tenant received it on October 11, 2021.

The October 09 One Month Notice was submitted into evidence. The effective date is November 09, 2021.

The reason to end the tenancy is: security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The details of the cause are:

The security deposit (\$750) was used as a portion of the February rent. [Tenant] gave [Landlord PC] a note, with his own writing, saying that the deposit was used as the

February rent and he promised to replenish soon. By now, 10 months have passed and [tenant] has not replenished the security deposit.

I have reminded him on 4th April, 21st September, 2021. The deadlines was set at 25th September 2021. I also reminded the tenant on 8th March.

PC testified the tenant did not pay the deposit and he asked the tenant in March, April, May and June 2021 to pay the deposit. On April 01, 2021 PC served the tenant a letter asking for the payment of the deposit.

The tenant said he paid the deposit on February 01, 2020 and he did not authorize the landlord to retain it or to use it for rent payment. The tenant affirmed he did not receive the April 01, 2021 letter.

PC stated the tenant disputed the October 09 One Month Notice 14 days late.

PC testified he attached the November 18 One Month Notice to the tenant's door on November 26, 2021. The tenant confirmed receipt of this Notice on November 26, 2021.

The parties submitted a partial copy of the November 18 One Month Notice into evidence containing pages 1 and 3. The tenant said he did not receive page 2 of the Notice. The landlord affirmed the Notice was served with all the pages.

PC stated the tenant did not dispute the November 18 One Month Notice.

PC testified he attached the December 14 Ten Day Notice to the tenant's door on December 14, 2021. The tenant confirmed receipt of this Notice on December 15, 2021.

The December 14 Ten Day Notice was submitted into evidence. It indicates the tenant did not pay utilities in the amount of \$435.38 due on December 10, 2021. The effective date is December 24, 2021.

PC said he does not remember when he served the demand letter for the utilities due on December 10, 2021. The tenant confirmed receipt of a reminder that he was owing utilities on December 10, 2021 and that the utilities were due on December 20, 2021. The tenant affirmed he did not receive a demand letter and paid the utilities on January 21, 2022.

PC stated the tenant did not dispute the December 14 Ten Day Notice.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

September 07 Ten Day Notice

I accept the undisputed testimony that the landlord served the September 07 Ten Day Notice on September 09, 2021, in accordance with section 88(g) of the Act and the tenant received it on the same date.

I find the tenant disputed the September 07 Ten Day Notice by the five-day deadline, in accordance with section 46(4)(b) of the Act, as the tenant received it on September 09, 2021 and submitted the application on September 10, 2021.

I find the tenant's testimony was more convincing than the landlords' testimony. Based on the tenant's convincing testimony and the September 01, 2021 receipt, I find the tenant paid rent in the amount of \$1,500.00 on September 01, 2021.

Thus, I cancel the September 07 Ten Day Notice, per section 46(4)(a) of the Act.

October 09 One Month Notice

I accept the undisputed testimony that the landlord served the October 09 One Month Notice and the tenant received it on October 11, 2021, in accordance with section 88 of the Act.

I find the tenant disputed the October 09 One Month Notice by the ten-day deadline to dispute it, in accordance with section 47(4) of the Act, as the tenant received it on October 11, 2021 and submitted the application on October 19, 2021.

Section 47(1)(a) of the Act states:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement

Based on the Notice and the tenant's testimony, I find the tenant paid a deposit at the onset of the tenancy.

The parties offered conflicting testimony about the usage of the deposit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support his claim. The landlord did not call any witnesses.

I find the landlord failed to prove, on a balance of probabilities, that the deposit was used as February rent. Thus, I find the landlord currently holds the deposit in the amount of \$750.00.

The landlord failed to prove, on a balance of probabilities, the ground of the Notice.

Accordingly, I cancel the October 09 One Month Notice.

November 18 One Month Notice

Based on the tenant's more convincing testimony, I find the landlord served the November 18 One Month Notice containing pages 1 and 3.

Section 52 of the Act states:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,**
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

(emphasis added)

The incomplete copy of the Notice served and submitted into evidence does not indicate the grounds for ending the tenancy. The landlord must serve and submitted a complete

copy of the Notice so the arbitrator can confirm its compliance with section 52 of the Act.

I find the incomplete copy of the Notice served and submitted is not in accordance with section 52(d) of the Act, as it does not indicate the grounds for ending the tenancy.

Accordingly, the November 18 One Month Notice is cancelled and of no force or effect.

December 14 Ten Day Notice

I accept the undisputed testimony that the landlord served the December 14 Ten Day Notice on December 14, 2021, in accordance with section 88(g) of the Act and the tenant received it on December 15, 2021.

The December amendment was submitted to the Residential Tenancy Branch on December 21, 2021.

Rule of Procedure 2.6 states:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office.

As the amendment was submitted on December 21, 2021, I find that this is the date the tenant disputed the December 14 Ten Day Notice.

I find the tenant disputed the December 14 Ten Day Notice after the five-day deadline , as the tenant received the Notice on December 15, 2021 and disputed it on Tuesday, December 21, 2021.

Section 46(4) and (5) of the Act states:

- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**
 - (b) must vacate the rental unit to which the notice relates by that date.**

(emphasis added)

As the tenant did not dispute the December 14, 2021 Ten Day Notice within the deadline of section 46(4)(b), I find the tenant is conclusively presumed to have accepted that the tenancy ended.

Pursuant to section 53(2) of the Act, I correct the effective date of the Notice to December 25, 2021, ten days after the tenant received the Notice. I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the ground to end tenancy and is in the approved form.

Based on the above, I find the tenancy ended on December 25, 2021, per section 44(1)(a)(ii) of the Act. I dismiss the tenant's application to cancel the December 14 Ten Day Notice and award the landlord an order of possession, per section 55(1) of the Act.

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlords effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: January 26, 2022