



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #910049508: CNR-MT, MNDCT, OLC, RP, RR, PSF, CNL-MT
File #110049733: OPR-DR, MNR-DR

Introduction

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

- An order pursuant to s. 46 to cancel a 10-Day Notice to End Tenancy dated September 2, 2021 (the “10-Day Notice”);
- An order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy;
- An order pursuant to s. 66 for more time to dispute both notices to end tenancy;
- An order pursuant to s. 32 for repairs to the rental unit;
- An order pursuant to s. 62 for an order that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 65 for rent reduction for repairs, services, or facilities agreed upon but not provided by the Landlord;
- An order pursuant to s. 65 that the Landlord provide services or facilities; and
- An order under s. 67 for monetary compensation.

The Landlord applies for the following relief under the *Act*:

- An order for possession pursuant to s. 55 after issuing the 10-Day Notice; and
- A monetary order pursuant to s. 67 for unpaid rent.

B.B. and K.K. appeared as agents for the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled on the Notice of Dispute Resolution. As the Tenant failed to attend, the hearing was conducted without their participation as provided for by Rule 7.3 of the Rules of Procedure.

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's agents advise that the Tenant was served with the 10-Day Notice on September 2, 2021 by having it posted to her door. I find that the Landlord served the Tenant with the 10-Day Notice in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on September 5, 2021.

The Landlord's agents further advised that they served the Tenant with their Notice of Dispute Resolution and evidence by way of registered mail sent on September 29, 2021. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem that the Tenant received the Landlord's application materials on October 4, 2021.

The Tenant was not present to demonstrate service of her application materials as contemplated by Rule 3.5 of the Rules of Procedure. However, the Landlord acknowledges receipt of the Tenant's Notice of Dispute Resolution.

Preliminary Issue – Tenant's Claim

The Tenant claims wide ranging relief in her application. Pursuant to Rule 6.6 of the Rules of Procedure, the Tenant bears the burden of proving the claims in her application, with the exception of the requests to cancel the notices to end tenancy.

The hearing was concluded after 10 minutes without participation of the Tenant who failed to attend. I find that the Tenant has failed to prove her claims under sections 32, 62, 65, and 67 of the *Act*. I hereby dismiss the Tenant's claims under those sections without leave to reapply.

The Landlord advised that no Two-Month Notice was ever issued and that the sole notice to end tenancy in issue is the 10-Day Notice. The Tenant did not provide a copy of a Two-Month Notice. Accordingly, I dismiss the Tenant's claim under s. 49 of the *Act* without leave to reapply as it does not appear any Two-Month Notice was ever issued.

The sole issues to be determined pertain strictly to the 10-Day Notice and unpaid rent, if any.

Preliminary Issue – Style of Cause

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The agents confirmed that the Landlord, as listed in their Notice of Dispute Resolution, is the correct Landlord. Accordingly, I amend the Tenant's application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the Landlord as listed in the Landlord's Notice of Dispute Resolution.

Issue(s) to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Landlord entitled to a monetary 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 Landlord's agents confirmed the following details with respect to the tenancy agreement:

- The Tenant moved into the rental unit on June 1, 2020;
- Rent of \$1,025.00 is due on the first day of each month; and
- The Landlord holds a security deposit of \$512.50 in trust for the Tenant.

The Landlord provides a copy of the written tenancy agreement, which confirms these details with the exception of the security deposit, which is listed as \$500.12 in the tenancy agreement. The Landlord's agents confirmed this was an error and the Tenant's security deposit held by the Landlord is \$512.50.

The Landlord's agents further advised that the Tenant was to pay an additional \$10.00 per month for a parking stall. K.K. confirmed that the Landlord does not seek payment of the parking fee as part of their application.

The Landlord's agents advise that the 10-Day Notice was issued on September 2, 2021 after the Tenant had failed to pay rent and the parking fee on September 1, 2021. The 10-Day Notice put into evidence lists that the Tenant was to pay \$1,035.00 on September 1, 2021, which the Landlord's agents confirmed comprised rent and the parking fee.

The Landlord's agents confirmed that the Tenant continues to reside within the rental unit and that the Landlord is claiming unpaid rent for the months of September 2021, October 2021, November 2021, December 2021, and January 2022. The agents confirmed that the Landlord has not received any payments from the Tenant since issuing the 10-Day Notice.

Analysis

The Tenant applies to cancel the 10-Day Notice and seeks more time to do so. The Landlord applies for an order for possession and a monetary order for unpaid rent.

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. When a 10-day notice to end tenancy is issued under s. 46 of the Act and is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. The Tenant here seeks more time to dispute the 10-Day Notice.

Under the present circumstances, the Tenant's application for more time to dispute the 10-Day Notice is dismissed without leave to reapply. I do so on the basis that the Tenant was not at the hearing to demonstrate that exceptional circumstances exist as contemplated by s. 66 of the Act.

Further and pursuant to Rule 2.6 of the Rules of Procedure, I find that the Tenant's application was made on September 16, 2021, which is the day the Residential Tenancy Branch received the Tenant's application and fee waiver. The Tenant is deemed to have received the 10-Day Notice on September 5, 2021, which is the third day after it was posted to her door. Taking this into account and applying s. 53, the corrected effective date of the 10-Day Notice is September 15, 2021. Section 66(3) of the Act prohibits a tenant from receiving more time to dispute a notice to end tenancy when they apply after the effective date set out in the notice. In this case, I would further

dismiss the Tenant's claim for more time to dispute the 10-Day Notice as her application was made after the effective date in the notice and is prohibited by s. 66(3) of the *Act*.

As the Tenant's application for more time fails, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 46(5) of the *Act*. As the Tenant continues to reside within the rental unit, I find that the Tenant is overholding. I further find that the Landlord is entitled to an order for possession and they shall have that order.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 26 of the *Act* sets out that a tenant must pay rent in accordance with the tenancy agreement unless they are authorized by the *Act* to deduct all or a portion of their rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord and had no lawful right to continue to reside within the rental unit after the effective date set out in the 10-Day Notice. I find that the Tenant breached their obligation to pay rent as set out in the tenancy agreement and that they have been overholding since September 15, 2021. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent and compensation in lieu of rent for the period in which the Tenant continued to reside within the rental unit. The Landlord could not have mitigated their damages as the Tenant continues to reside within the rental unit.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent as stated by their agents at the hearing.

I find that the Landlord's have demonstrated the following with respect to their claim for unpaid rent and compensation:

Month	Rent Due	Rent Paid	Difference
September 2021	\$1,025.00	\$0.00	-\$1,025.00
October 2021	\$1,025.00	\$0.00	-\$1,025.00
November 2021	\$1,025.00	\$0.00	-\$1,025.00
December 2021	\$1,025.00	\$0.00	-\$1,025.00
January 2022	\$1,025.00	\$0.00	-\$1,025.00
TOTAL			\$5,125.00

I find that the Landlord's have quantified their monetary claim as \$5,125.00. I exercise my discretion under s. 72(2) of the *Act* and direct that the security deposit of \$512.50 be retained by the Landlord in partial satisfaction of the total amount owed by the Tenant.

Conclusion

I dismiss the Tenant's application. The Tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 46(5) of the *Act*. As the Tenant continues to reside within the rental unit, I grant the Landlord and order for possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served with the order for possession.

I further find that the Landlord has demonstrated a monetary claim and make a total monetary order taking the following into account:

Item	Amount
Total unpaid rent and compensation in lieu of rent	\$5,125.00
Less security deposit to be retained by Landlord as per s. 72(2)	-\$512.50
TOTAL	\$4,612.50

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$4,612.50** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does 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 Tenant does 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: January 25, 2022

Residential Tenancy Branch