



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310054712: CNR-MT, LRE
File #310059770: CNR, MNDCT, LRE
File #310058262: LRE, OLC, CNR
File #310058305: OLC, LRE, CNC
File #910054931: OPR, FFL, MNRL-S, OPC

Introduction

The parties in the present dispute file five separate applications: four for the Tenant and one for the Landlord with two amendments.

The Tenant's applications seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- To cancel a 10-Day Notice to End Tenancy dated November 3, 2021 pursuant to s. 46;
- To cancel a 10-Day Notice to End Tenancy dated December 18, 2021 pursuant to s. 46;
- To cancel a 10-Day Notice to End Tenancy dated January 9, 2021 pursuant to s. 46;
- To cancel a One-Month Notice to End Tenancy dated December 18, 2021 (the "One-Month Notice") pursuant to s. 47;
- An order under s. 66 granting the Tenant more time to dispute 10-Day Notice of November 3, 2021;
- An order under s. 70 restricting the Landlord's right of entry to the rental unit;
- An order under s. 67 for monetary compensation; and
- An order under s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

The Landlord's application under the *Act* seeks the following relief:

- An order for possession under s. 55 pursuant to the 10-Day Notice of November 3, 2021;
- An order under s. 67 for unpaid rent; and
- An order under s. 72 for return of the Landlord's filing fee.

Two amendments from the Landlord, dated December 20, 2021 and January 10, 2022 revise the Landlord's monetary claim and add the subsequent notices to end tenancy, being the two dated December 18, 2021 and the one dated January 9, 2022.

D.D. and J.W. appeared as Tenants. M.H. and T.H. appeared as Landlords.

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 Tenant indicates that she served her applications on the Landlord by posting it to the Landlord's residence and in the case of her first application, leaving it with someone at the Landlord's residence. The Landlord acknowledges receipt of the Tenants four applications and does not raise objection to their service however notes that the first application was left with a minor. Based on the Landlord's acknowledged receipt of the four application and based on their not raising objections to the applications, I find that the Landlord was sufficiently served with the Tenant's four Notices of Dispute Resolution pursuant to s. 71(2) of the *Act*.

The Landlord says that the Tenant was served with their Notice of Dispute Resolution by way of registered mail. The Landlord was unable to confirm the tracking information for the service of their Notice of Dispute Resolution or the date that it was sent. The Tenant denies receiving the Landlord's application. I note that the Landlord has provided several photographs of registered mail receipts to the Residential Tenancy Branch, some of which do not have legible postage dates.

Given the Landlord's inability to demonstrate when the Notice of Dispute Resolution was served and the Tenant's denial, I am unable to make any findings on if or when the Notice of Dispute Resolution was served. As the Landlord failed to clearly demonstrate service, their application is hereby dismissed with leave to reapply.

Preliminary Issue – Service of the Parties' Evidence

Both parties provided evidence to the Residential Tenancy Branch.

The Tenant says that her evidence was served via email. The Tenant says the email was sent on February 8, 2022. The Landlord acknowledges its receipt on February 9, 2022 but object to its inclusion due to its late service. I note that Rule 3.14 of the Rules of Procedure requires an applicant to serve their evidence at least 14-days before the hearing. The Tenant says she served it three-days before the hearing. Further, email does not appear to be an approved form of service as contemplated by s. 89 of the *Act* and s. 43 of the Regulations.

I decline to include the Tenant's evidence as it was not served in accordance with s. 89 of the *Act* and was not served within the time frame contemplated by Rule 3.14 of the Rules of Procedure. To permit its inclusion would be procedurally unfair to the Landlord.

The Landlord says that her evidence was served by leaving it in the Tenant's mailbox on January 29, 2022. The Tenant denies receiving the Landlord's evidence on that occasion. The Landlord re-served their evidence on February 2, 2022, which was acknowledged received by the Tenant on that day.

I note that the dismissal of the Landlord's application means that she is strictly an application respondent. Rule 3.15 of the Rules of Procedure provides that an application respondent must serve their evidence at least seven-days before the hearing. The Landlord's evidence was acknowledged received at least nine-days before the hearing. I find that the Landlord's evidence was sufficiently served on the Tenant pursuant to s. 71(2) of the *Act* based on its acknowledged receipt by the Tenant on February 2, 2022.

Despite my finding above, I confirmed with the parties at the hearing that the following documents be admitted into the record as they were likely in everyone's possession by virtue of their nature. By consent, the parties agreed to admit the following documents into evidence:

- The most recent tenancy agreement signed August 1, 2021
- The 10-Day Notice to End Tenancy signed November 3, 2021;
- The 10-Day Notice to End Tenancy signed December 18, 2021;
- The 10-Day Notice to End Tenancy signed January 9, 2022; and
- The One-Month Notice.

Two 10-Day Notices, one signed February 2, 2022 and the second October 23, 2021, were referenced by both parties. However, those notices were not the subject matter of the applications before me.

Preliminary Issue – Tenant's Claims

The Tenant applies for various and wide-ranging relief. 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 disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties that the primary issue was whether the tenancy would continue or end based on the various notices to end tenancy. Further, some of the Tenant's claims would not be relevant in the event that I found that the tenancy would be over.

Accordingly, I find that the Tenant's claims under sections 62 (order that the Landlord comply with the Act), 67 (monetary compensation), and 70 (Landlord's right of entry) are not sufficiently related to the primary issue of whether the notices to end tenancy would be upheld or set aside.

I dismiss those portions of the Tenant's applications. If the tenancy continues, her claims under sections 62 and 70 will be dismissed with leave to reapply. If the tenancy ends, it will be dismissed without leave to reapply as the tenancy is over. The Tenant's monetary claim under s. 67 is dismissed without leave to reapply.

Issue(s) to be Decided

- 1) Should the 10-Day Notices to End tenancy be set aside?
- 2) Should the One-Month Notice be set aside?
- 3) Is the Landlord entitled to an order for possession?
- 4) 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 that the tenant was to pay \$1,300.00 per month in rent on the first day of each month. The most recent tenancy agreement, signed on August 1, 2021, indicates a security deposit of \$650.00 is currently held by the Landlord in trust for the Tenant.

The Landlord indicates that the Tenant began to have issues paying rent beginning in the summer of 2021. According to the Landlord, the Tenant had the following arrears with respect to rent:

Month	Arrears
August 2021	\$190.00
September 2021	\$1,300.00
October 2021	\$1,300.00
November 2021	\$0.00
December 2021	\$1,300.00
January 2021	\$1,300.00
February 2021	\$1,300.00
Total Arrears	\$6,690.00

The Landlord indicates that they received \$1,300.00 from the Tenant on November 1, 2021 and that this was the last rent payment received from the Tenant.

The Tenant acknowledges the payment history provided by the Landlord and does not dispute any of the missed payments or the arrears.

The Tenant says that she has gone onto disability payments and that there was a delay in getting her payments together due to the Landlord's failure to sign certain documents.

The Landlord says that they have spoken with a representative for the Tenant's disability payment provider, who indicated that the Tenant's coverage was not sufficient to cover monthly rent. The Landlord denies refusing to accept payment of rent in whole or part. However, the Landlord also acknowledges that she could have received some

payment from the disability payment provider but was advised that if she did so then the Tenant would not be permitted to apply this amount to future rent obligations if the Landlord chose to proceed with an eviction.

The Landlord says that all the notices to end tenancy were served by leaving them in the Tenant's mailbox. The Tenant was contradictory in her evidence on whether or when she received the 10-Day Notice signed November 3, 2021. The Tenant acknowledges that on December 23, 2021, she received the 10-Day Notice signed on December 18, 2021. The Tenant acknowledges receipt of the 10-Day Notice signed January 9, 2021 on January 9, 2021.

The One-Month Notice was issued on the basis the basis that the Tenant was unreasonably disturbing other occupants of the residential property. The Tenant acknowledges receiving the One-Month Notice on December 23, 2021.

The Landlord says that she received a letter from the residential property's strata in December 2021 notifying her of a noise complaint from the Tenant. The Landlord says that the letter threatens to fine the Landlord in the event that the issue is not corrected. The Landlord further says that the letter states that the complaint was that the Tenant was yelling. The Landlord acknowledges not having provided a warning or otherwise notifying the Tenant of the noise complaint other than by issuing the One-Month Notice.

The Tenant says that occupant beneath her rental unit had spoken to her some months before December regarding noise and that she dealt with the issue in a neighbourly fashion. The Tenant says that her co-tenant, J.W., had an injury and surgery in December which required him to use a walker in the rental unit, which likely caused increased noise in the unit below hers. She further says that J.W. is hard of hearing and that she must speak loudly such that he can hear her.

The Tenant argues that the notices to end tenancy should not be enforced on the basis that they list her first name as a nickname rather than her legal first name.

Analysis

The Tenant applies to cancel various notices to end tenancy.

Dealing first with the issue of unpaid rent and the 10-Day Notice, where a tenant has failed to pay rent, a landlord may elect to end the tenancy by issuing a notice to end

tenancy pursuant to s. 46 of the *Act* that is effective no sooner than 10-days after it is received by the tenant.

I find that the Landlord served the 10-Day Notices in accordance with s. 88 of the *Act* by leaving them in the Tenant's mailbox. I further find that the Tenant received the notices as follows based on the Tenant's acknowledgement of the same:

- The 10-Day Notice of December 18, 2021 on December 23, 2021; and
- The 10-Day Notice of January 9, 2022 on January 9, 2022.

With respect to the 10-Day Notice signed November 3, 2021, I note that the Tenant herself filed to dispute the notice in her application filed that was filed on November 13, 2021. In that same application, the Tenant also requests more time to dispute that November 3 notice. In the Tenant's application, she indicates that she received that particular notice on November 3, 2021 in her mail box. Given this, I find that the Tenant received the 10-Day Notice of November 3, 2021 in her mailbox on November 3 as stated in her application.

I note that pursuant to s. 46(5) of the *Act* a tenant must file to dispute a 10-Day Notice within five-days of receiving it. Thus, the Tenant failed to dispute the 10-Day Notice of November 3, 2021 in time. Section 66 of the *Act* permits the late filing under exceptional circumstances and when it the application is made before the effective date set out in the notice.

I find that exceptional circumstances are present here. The Landlord has chosen to issue multiple and repeating notices to end tenancy. Though not in issue in the present applications, there are additional 10-Day Notice from October 23, 2021 and February 2, 2021, which were mentioned by the parties in their submissions.

If a tenant fails to pay rent, one notice may be issued and there is no need to issue subsequent notices that deal with the same matter. The *Act* does not prevent a Landlord from issuing multiple and repeating 10-Day Notices. However, such practice results in the procedural issues that arose with the present matter, leading to an understandable confusion on the part of the Tenant on when she was to file her application and what she was disputing. Accordingly, I find under s. 66(1) of *Act* that that the Tenant be permitted more time to dispute the 10-Day Notice of November 3, 2021.

However, there is little dispute between the parties that the Tenant failed to pay rent as described by the Landlord. 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 the circumstances listed above are presently applicable. The Tenant's argument that the Landlord failed to sign paperwork that prevented her receipt of disability payments that could have gone to rent is not relevant. The *Act* is unequivocal that the obligation to pay rent rests solely with the Tenant and makes no consideration for circumstances described by the Tenant.

The Tenant further argues that the various notices do not have the correct spelling of her name, using a nickname rather than the legal spelling of her first name. However, I do not find that this invalidates the notices. The surname is correct on all the notices as is the address for the rental unit. The Tenant clearly knew why the 10-Day Notices were issued, that they applied to her, and failed to dispute them. To the extent that it is necessary, I amend the 10-Day Notices pursuant to s. 68 to list the Tenant's legal first name rather than her nickname as I find it is reasonable to do so and that the Tenant clearly knew the notices applied to her.

I have reviewed the 10-Day Notices and find that they comply with the formal requirements listed in s. 52 of the *Act*.

As the Tenant acknowledges rent had not been paid and the 10-Day Notices are in the proper form, I find that there is no basis upon which to cancel the 10-Day Notices. Accordingly, the Tenant's applications to cancel the 10-Day Notices are dismissed.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. Accordingly and based on my previous findings, I grant the Landlord an order for possession.

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*.

The Tenant does continue to reside within the rental unit and I order pursuant to s. 68(2) that the date the tenancy ends is the day of the this hearing.

Based on the uncontradicted evidence of the parties, I find that the Tenant is in arrears of rent in the following amount:

Month	Arrears
August 2021	\$190.00
September 2021	\$1,300.00
October 2021	\$1,300.00
November 2021	\$0.00
December 2021	\$1,300.00
January 2021	\$1,300.00
February 2021	\$1,300.00
Total Arrears	\$6,690.00

Accordingly, I grant the Landlord an order for unpaid rent in the amount of \$6,690.00.

As the tenancy is over, I need not consider the Tenant's application to cancel the One-Month Notice.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notices of November 3, 2021, December 18, 2021, and January 9, 2022. I further find that the 10-Day Notices comply with the formal requirements of s. 52. As the Tenant's application is dismissed, the Landlord is entitled to an order for possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

Pursuant to s. 55(1.1) of the *Act*, I find that the Landlord is entitled to unpaid rent in the amount of \$6,690.00. Accordingly, I order that the Tenant pay **\$6,690.00** to the Landlord for unpaid rent.

The Landlord's application is dismissed due to their failure to demonstrate service. The Tenant's claims under sections 62 and 70 are dismissed without leave to reapply as the tenancy is over. The Tenant's claim under s. 67 is dismissed with leave to reapply.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenant does not comply with the monetary portion of this order, it may be filed 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 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: February 11, 2022

Residential Tenancy Branch