



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR-MT, OLC, MNDCT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an extension of time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated August 12, 2021 (the "First 10 Day Notice") pursuant to section 66;
- cancellation of the First 10 Day Notice pursuant to section 46;
- cancellation of a 10 Day Notice dated September 8, 2021 (the "Second 10 Day Notice");
- cancellation of a 10 Day Notice dated November 1, 2021 (the "Third Day Notice");
- an order that the Landlord comply with the Act, Residential Tenancy Regulations ("Regulations") or tenancy agreement pursuant to section 62; and
- an order to seek a monetary order for compensation pursuant to section 67.

The original hearing of this application was held on November 30, 2021 ("Original Hearing"). Following the Original Hearing, I was unable to reconcile the testimony given by the Tenant and Landlord's agents with the documentary evidence submitted by the parties. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") I adjourned the hearing and issued a decision dated December 8, 2021 ("Interim Decision"). The Interim Decision and Notices of Dispute Resolution Proceeding for this adjourned hearing were served on the parties by the Residential Tenancy Branch ("RTB").

The Landlord's agents ("PM", "JM", "HS" and "EH"), and the Tenant attended the Original Hearing. PM and JM and another one of the Landlord's agents ("BH") and the Tenant attended this hearing. They were given a full opportunity to be heard, to present sworn

testimony, to make submissions and to call witnesses at the Original Hearing and this hearing. The Tenant identified a person (“DH”) the Tenant might call as a witness at the Original Hearing but DH was not called. Two witnesses for the Landlord (“EH” and HS”) attended the Original Hearing when required to provide affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding for the Original Hearing and some of his evidence (“NDRP Package”) was served on the Landlord in-person but the Tenant could not recall the date he served it. PM could not recall the date the Landlord received the NDRP Package but stated that it was sometime in October 2021. I find that the NDRP Package was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Tenant testified he filed an amendment (“First Amendment”) to dispute the Second 10 Day Notice and served it on the Landlord in-person but the Tenant could not recall the date he served it. PM acknowledged the Landlord received the First Amendment but could not recall the date it was received. I find the First amendment was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Tenant testified he filed another amendment (“Second Amendment”) to Dispute the Third 10 Day Notice and served it on the Landlord in-person but the Tenant could not recall the date he served it. PM acknowledged the Landlord received the Second Amendment but could not recall the date it was received. I find the Second Amendment was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

PM stated the Landlord served evidence on the Tenant. The Tenant acknowledged receipt of the Landlord’s evidence. I find that Tenant was served with the Landlord’s evidence pursuant to section 88 of the Act.

Preliminary Matter – Amendment of Respondent Named in Tenant’s Application

PM stated he was an agent of the Landlord, and he provided the name of the Landlord (“CPL”) of the residential property in which the rental unit is located. PM submitted the First, Second and Third 10 Day Notices and stated the Notices correctly identified the name of the Landlord. PM requested that I amend the Tenant’s application to remove PM as a respondent and add CPL as a respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

As PM's request, on behalf of the Landlord, could reasonably be anticipated by the Tenant, I amended the Tenant's application to remove PM as a respondent and add CPL as the respondent.

Preliminary Matter - Unrelated Issues

In the application, the Tenant seeks an order that the Landlord comply with the Act, Regulations and or tenancy agreement pursuant to section 62.

Paragraph 2.3 of the RoP states:

Related Issues

- 2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the most urgent matter set out in the Tenant's application is for more time to make his application to cancel the First 10 Day Notice, to seek cancellation of the First 10 Day Notice and for recovery of the filing fee for his application. I find the Tenant's claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement and his claim for an order to seek a monetary order for compensation are not sufficiently related to the claims to be determined during this proceeding. Pursuant to Rule 4.2 of the RoP, I dismissed, with leave to re-apply, the Tenant's claim for an order that the Landlord to comply with the Act, Regulations and/or tenancy agreement and his claim for an order to seek a monetary order for compensation.

Issues to be Decided

Is the Tenant entitled to:

- an extension of time to make an application to cancel the First 10 Day Notice?
- cancellation of the First 10 Day Notice pursuant to section 46?
- cancellation of the Second 10 Day Notice pursuant to section 46?
- cancellation of the Third 10 Day Notice pursuant to section 46?
- if the Tenant's request for an extension of time to dispute the First 10 Day Notice is dismissed, or if the extension is granted but the First 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession and monetary order for unpaid rent pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

PM testified the tenancy commenced on June 1, 2015, for a fixed term ending May 31, 2016, and the tenancy then continued on a month-to-month basis. The rent was \$725.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$362.50 that PM confirmed was being held by the Landlord in trust for the Tenant. PM testified the rent is currently \$860.00. PM stated paragraph 10 the tenancy agreement provides the Landlord may charge \$25.00 for each late payment of rent. The Tenant confirmed the foregoing details of the tenancy.

PM testified the First 10 Day Notice was served on the Tenant's door on August 13, 2021, and it stated the Tenant had rental arrears of \$885.00 as of August 1, 2021. The Tenant disputed the First 10 Day Notice was served on his door. PM arranged to have HS and EH call into the hearing to give affirmed testimony. HS testified he attached the First 10 Day Notice to the Tenant's door on August 13, 2021, and EH testified that she witnessed HS attach the First 10 Day Notice to the Tenant's door on August 13, 2021. I find the testimony of HS and EH to be more persuasive than the Tenant's testimony regarding service of the First 10 Day Notice. I find that the First 10 Day Notice was served on the Tenant in accordance with the section 88 of the Act and, pursuant to

section 90 of the Act the Tenant was deemed to have received the First 10 Day Notice on August 16, 2021.

PM testified the Second 10 Day Notice was served on the Tenant's door on September 9, 2021, and it stated the Tenant had rental arrears of \$910.00 as of September 1, 2021. The Tenant disputed the Second 10 Day Notice was served on his door. HS testified he attached the Second 10 Day Notice to the Tenant's door on September 9, 2021, and EH testified that she witnessed HS attach the Second 10 Day Notice to the Tenant's door on September 9, 2021. I find the testimony of HS and EH to be more persuasive than the Tenant's testimony regarding service of the Second 10 Day Notice. I find that the Second 10 Day Notice was served on the Tenant in accordance with the section 88 of the Act and, pursuant to section 90 of the Act the Tenant was deemed to have received the Second 10 Day Notice on September 12, 2021.

PM testified the Third 10 Day Notice was served on the Tenant's door on November 4, 2021, and it stated the Tenant had rental arrears of \$1,920.00 as of November 1, 2021. The Tenant disputed the Third 10 Day Notice was served on his door. HS testified he attached the Third 10 Day Notice to the Tenant's door on November 4, 2021, and EH testified that she witnessed HS attach the Third 10 Day Notice to the Tenant's door on November 4, 2021. I find the testimony of HS and EH to be more persuasive than the Tenant's testimony regarding service of the Third 10 Day Notice. I find that the Third 10 Day Notice was served on the Tenant in accordance with the section 88 of the Act and, pursuant to section 90 of the Act the Tenant was deemed to have received the Third 10 Day Notice on November 7, 2021.

In the Interim Decision, I requested the Landlord review the statement of account that was submitted for the Original Hearing and, if necessary, provide an update that statement of account, at least 7 clear days before the date of this hearing, to ensure that it and the notations on it were correct. Pursuant to those instructions, the Landlord served the Tenant with, and filed with the RTB an updated statement of account disclosing the rental charges and late payment fees from August 1, 2021, through to December 1, 2021, payments made by the Tenant and updated notations. A notation on the updates statement submitted by the Landlord for this hearing was revised and it now disclosed the payment of \$860.00 made by the Tenant on September 2, 2021, was applied to the rental arrears of August 2021. TG testified the Tenant had rental arrears of \$885.00 as of December 1, 2021, calculated as follows:

Date	Rent Owed	Late Fee	Paid	Balance
01-Aug-21	\$860.00			\$860.00
05-Aug-21		\$25.00		\$885.00
01-Sep-21	\$860.00			\$1,745.00
02-Sep-21			\$860.00	\$885.00
03-Sep-21		\$25.00		\$910.00
01-Oct-21	\$860.00			\$1,770.00
07-Oct-21			\$710.00	\$1,060.00
01-Nov-21	\$860.00			\$1,920.00
03-Nov-21		\$25.00		\$1,945.00
05-Nov-21			\$1,060	\$885.00
01-Dec-21	\$860.00			\$1,745.00
01-Dec-21			\$860.00	\$885.00
Total	\$3,440.00	\$75.00	\$2,630.01,0	\$885.00

The Tenant testified he did not get the notice stating that rent was to be paid to the Landlord who had been appointed by the owner of the residential premises. The Tenant stated he e-transferred \$860.00 to the former landlord on July 31, 2021. He stated the \$860.00 was eventually returned to his bank account on July 31, 2021, and on the same day he e-transferred \$860.00 to the Landlord. The Tenant stated he made an e-transfer of \$860.00 to the Landlord on August 13, 2021, and another e-transfer to the Landlord for \$860.00 on September 2, 2021. The Tenant submitted copies of his bank statements for June through December 2021 to corroborate his testimony. The Tenant admitted he did not make an application to dispute the First 10 Day Notice until after the 5-day dispute period permitted by section 46(4) had expired.

In the Interim Decision, I requested the Tenant serve the Landlord, and file with the RTB, at last 7 clear days before this hearing, evidence from his financial institution that identified the recipient of three e-transfers, each for \$860.00, that he stated were made from his bank account on July 31, August 13, and September 2, 2021, respectively. At this hearing, the Tenant admitted he did not obtain this information from his banking institution.

Analysis

Sections 46 and 53 of the Act state:

- 46(1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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 in italics added]

- 53(1)** If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the

effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on the testimony of the PM, HS and EH, I find the First 10 Day Notice was served on the Tenant door on August 13, 2021, and, pursuant to section 90, the Tenant was deemed to be served on August 16, 2021. Pursuant to section 46.4, the Tenant had until August 23, 2021, being the next business day after the end of the 5-day dispute period, to make his application for dispute resolution to dispute the First 10 Day Notice. The Tenant admitted he did not dispute the 10 Day Notice by August 23 and that he has not moved out of the rental unit as of the date of this hearing. The records of the RTB disclose the Tenant's application was made on October 25, 2021.

In the Interim Decision, I requested the Tenant serve the Landlord, and file with the RTB evidence from his financial institution that identified the recipient of three e-transfers, each for \$860.00, that the Tenant e-transferred on July 31, August 13, and September 2, 2021. At this hearing, the Tenant admitted that he did not obtain this information from his banking institution. As a result, I am unable to verify the Tenant made the first payment of \$860.00 to his former landlord and the second and third payments of \$860 each to the Landlord. On the other hand, the Landlord provided an updated statement of account that verified the same information as the original statement of account but a notation that had caused confusion for me when I reviewed original statement of account that was submitted by the PM at the Original Hearing. I find that Landlord has established, on a balance of probabilities, that the Tenant owed \$885.00 for rental arrears as of the date the First 10 Day Notice was served on the Tenant. Based on the above, I find the First 10 Day Notice was issued for a valid reason.

The Tenant requested an extension of time to make his application which was made on October 25, 2021. Section 66 of the Act states:

- 66(1)** The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [*landlord's notice: non-payment of rent*] for a tenant to pay overdue rent only in one of the following circumstances:
 - (a) the extension is agreed to by the landlord;
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

[emphasis in italics added]

As noted above, the Tenant was deemed to have received the First 10 Day Notice on August 16, 2021. The First 10 Day Notice stated the effective date for the move-out was August 22, 2021, which is less than the 10 days permitted by section 46(1) of the Act. Pursuant to section 53(2) of the Act, the effective date of the 10 Day Notice was deemed to be August 26, 2021, being the earliest date that complies with section 46(1) of the Act. I find that the Tenant's claim for an extension of time to dispute the First 10 Day Notice was made after the effective date of the First 10 Day Notice. Subsection 66(3) of the Act prohibits me from extending the time limit for the Tenant to make an application for an extension of time to dispute the First 10 Day Notice beyond the effective date of that Notice. Based on the above, I dismiss the Tenant's request for an extension of time to dispute the First 10 Day Notice.

The tenant did not make an application for dispute resolution to dispute the First 10 Day Notice by the last day permitted by section 46(4) of the Act and I have dismissed the Tenant's claim for an extension of time to dispute the First 10 Day Notice. Based on the above, pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice which was deemed to be August 26, 2021. As the tenancy has been conclusively presumed to have ended on August 26, 2021, the Tenant's claims for cancellation of the Second and Third 10 Day Notices are moot as the tenancy was already ended prior to the Landlord serving the Second and Third 10 Day Notices. Based on the foregoing, I dismiss the Tenant's application in its entirety.

Section 55 of the Act states:

- 55 (1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
- (1.1) 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.

I have reviewed the First 10 Day Notice and find it complies with the section 52 form and content requirements. The undisputed testimony of the Landlord was the Tenant has not vacated the rental unit. Pursuant to section 68(2)(1) of the Act, I order the tenancy ended on January 31, 2022. Based on the above, pursuant to section 55(1) of the Act, I order that the Tenant provide the Landlord with vacant possession of the rental unit.

I am satisfied that, upon hearing the testimony and evidence of the Landlord that the amount of unpaid rent owing including the rent owing since the date of the First 10 Day Notice, is \$885.00. Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$885.00. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of \$362.50 from the \$885.00 owing by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord 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.

Pursuant to section 55(1.1), I order that the Tenant pay the Landlord \$510.00 representing the following:

Description	Amount
Rental Arrears	\$885.00
Security Deposit Credit	-\$362.50
Total	\$522.50

The Tenant's application is dismissed without leave to reapply.

This Monetary Order may be filed and enforced in the Provincial 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: February 10, 2022

Residential Tenancy Branch