



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNR, DRI, RR, RP, OLC, LRE, FFT
For the landlords: OPR, MNRL-S, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received on September 16, 2021 (the September 16, 2021 Notice), pursuant to section 46;
- an order to dispute a rental increase, pursuant to section 43;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee, under section 72.

The landlords' application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent dated December 09, 2021 (the December 09, 2021 Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the tenants' security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee, under section 72.

Tenants DS and BS and landlords SM and IM attended the hearing. The landlord was assisted by agents AN, JG and counsel SG. Witness for the landlords CY and for the tenants DL, GF and OF also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

The tenants' application lists applicants tenants DS and BS and respondents landlords SM and IM. The landlords' application lists applicants landlords SM and IM and respondent tenant DS.

Preliminary Issue – Correction of BS's Name

At the outset of the hearing tenant BS corrected her last name. Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

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 16, 2021 and December 09, 2021 Notices, the claim for monetary compensation for unpaid rent and an order to dispute a rental increase are not sufficiently related to any of the other claims to warrant that they be heard together.

The 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, the claim for monetary compensation for unpaid rent and for an order to dispute a rental increase. I exercise my discretion to dismiss all of the claims with leave to reapply except cancellation of the notices to end tenancy, the claim for monetary compensation for unpaid rent and for an order to dispute a rental increase which will be decided upon.

Preliminary Issue – Amendment of monetary claim

At the hearing landlord IM sought to amend the application for \$1,716.75 in unpaid rent to include an additional \$864.75 for the unpaid rent of February 2022.

The increase in the landlords' monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlords' monetary claim for unpaid rent to \$2,581.50.

Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the September 16, 2021 Notice?
2. An order to dispute a rental increase?
3. An authorization to recover the filing fee?

Are the landlords entitled to:

1. An order of possession under the December 09, 2021 Notice?
2. A monetary order for unpaid rent?
3. An authorization to retain the deposit?
4. An authorization to recover the filing fee

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' and tenants' 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 in December 2010 and the tenants are currently occupying the rental unit. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence. It indicates the landlords are SM and IM and the tenant is DS, monthly rent of \$800.00 is due on the first day of the month. Rent does not include utilities.

AN affirmed she served a notice of rent increase in November 2017 and that rent increased to \$832.00, effective on March 01, 2018. Tenants DS and BS stated they received a notice of rent increase in 2017 and that this notice increased rent to \$832.00.

Tenant DS testified he did not agree with the rent increase effective on March 01, 2018 and continued to pay \$800.00 until October 2021. BS said the landlord verbally authorized a rent reduction to \$775.00 effective on November 01, 2021.

Landlord IM affirmed she did not authorize a rent reduction.

AN stated a second notice of rent increase was served in December 2018 and that rent increased to \$852.80, effective on April 01, 2019. This amount was rounded down to \$852.00.

Both parties attended a prior hearing at the Residential Tenancy Branch on July 06, 2021. The prior decision (the file number is referenced on the cover page of this decision) was submitted into evidence. It states: "the parties agree that the monthly rent is currently \$850".

AN stated the landlords agreed that rent is \$850.00 in the prior hearing because they rounded this amount from \$852.80. BS testified that she agreed that rent is \$850.00 in the prior hearing because rent was \$775.00 and the utilities were \$75.00.

Both parties agreed the tenant shares the utilities with the next-door tenant CY.

AN said that tenant DS is responsible to pay 2/3 of the utilities and tenant CY is responsible to pay 1/3 of the utilities, but the relationship between tenants DS and CY deteriorated and tenant CY only wants to pay 1/4 of the utilities.

AN affirmed a third notice of rent increase (submitted into evidence) was served in September 2021 and that rent increased to \$864.71, effective on January 01, 2022. The September 2021 notice of rent increase is dated September 24, 2021. It states monthly rent is \$852.00 and that it will increase by \$12.75 to \$864.75 effective on January 01, 2022. Tenant BS confirmed receipt of the September 2021 notice of rent increase.

BS confirmed receipt of the September 16, 2021 Notice. It is dated September 02, 2021 and it indicates: "\$800.00 in unpaid rent due on September 01, 2021". Landlord IM stated the tenant paid \$775.00 a few days after she served the September 16, 2021 Notice.

Tenant DS submitted into evidence a ten day notice to end tenancy dated November 02, 2021. It indicates monthly rent in the amount of \$775.00 due on November 01, 2021 was not paid.

BS testified she paid monthly rent in the amount of \$775.00 on October 01 and November 01, 2021.

AN said the tenant did not pay rent in December 2021. AN served the December 09, 2021 Notice by registered mail and the tenant received it on December 10, 2021. BS confirmed receipt of the December 09, 2021 Notice. It indicates: "852.00 in unpaid rent due on December 01, 2021". The effective date is December 19, 2021.

BS affirmed she did not pay December 2021 rent because she paid for emergency repairs. BS stated she contacted the landlord in writing twice on November 29, 2021 to inform the fridge needed to be repaired and the landlord only replied on December 02, 2021.

Landlord IM testified BS contacted her on November 29, 2021 to report issues with the fridge and on November 30, 2021 the tenant informed he purchased a new fridge. Landlord IM did not authorize the tenant to overhold rent.

The landlords are claiming for December 2021 rent in the amount of \$852.00, January and February 2022 in the amount of \$864.75 per month. The landlord submitted a monetary order worksheet dated January 15, 2022 indicating the tenant did not pay rent in December 2021 and January 2022.

BS said she did not pay rent in January and February 2022 because she does not know the current amount of rent.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For

example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the tenancy agreement, I find BS is an occupant.

Rent Increase

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

43 (1)A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

The landlords are subject to section 43(1) of the Act.

Based on the testimony offered by both parties and the tenancy agreement, I find that monthly rent was \$800.00 from December 2010 to February 28, 2018. I accept AN's uncontested convincing testimony that the landlords served a notice of rent increase in November 2017 and that rent increased to \$832.00 on March 01, 2018.

In accordance with section 22 of the Regulation, the maximum allowable rent increase was 4% in 2018, 2.5% in 2019, 2.6% in 2020 and 1.5% in 2022

(<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>).

Based on the testimony offered by both parties, I find the rent increase effective on March 01, 2018 was in accordance with the Act and the Regulation. I note the tenants do not need to agree to a rent increase in accordance with sections 41, 42 and 43 of the Act.

The testimony of the parties in regard to a verbal agreement is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the tenant) has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant has not proved, on a balance of probabilities, that the landlord allowed the tenant not to pay the rent increase effective on March 01, 2018 or to reduce rent.

Based on the convincing testimony offered by AN, I find the rent increase effective on April 01, 2019 was in accordance with the Act and the Regulation.

Based on the testimony offered by both parties and the September 2021 notice of rent increase, I find the rent increase effective on January 01, 2022 was in accordance with the Act and the Regulation.

In summary, rent was \$800.00 from December 2010 to February 28, 2018; \$832.00 from March 01, 2018 to March 31, 2019; \$852.80 from April 01, 2019 to December 31, 2021 and \$864.75 since January 01, 2022.

September 02, 2021 Notice

Based on the testimony offered by BS, I find the tenant received the September 16, 2021 Notice on September 16, 2021 and disputed it on September 21, 2021. I find the tenants disputed the September 02, 2021 Notice within the timeframe of section 46(4) of the Act.

Based on the testimony offered by tenant DS, the September 02, 2021 Notice and the November 02, 2021 Notice, I find the landlords accepted rent from the tenant in the amount of \$775.00 from September to November 2021.

Section 46(4) of the Act states:

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.

Although the September 02, 2021 Notice indicated that the amount of unpaid rent was \$800.00, I find that there was a pattern of the tenant paying \$775.00 per month. The landlord issued a subsequent notice to end tenancy for unpaid rent claiming unpaid rent of \$775.00. I find that the tenant's payment of \$775.00 is sufficient for me to cancel the September 02, 2021, pursuant to section 46(4) of the Act.

December 09, 2021 Notice

Based on the testimony offered by both parties, I find the tenant received the December 09, 2021 Notice on December 10, 2021 and did not dispute it.

Section 46(5) of the Act states:

- 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.

Pursuant to section 53(2) of the Act, the effective date of the Notice is corrected to December 20, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and is in the approved form.

I note the tenant was confused regarding the amount of rent, as the landlords were accepting \$775.00 in 2021. However, the tenants did not pay rent at all in December 2021.

The tenant cannot withhold rent if the landlord does not comply with the act. Per section 33(1)(c) of the Act, a fridge repair is not considered an emergency repair.

Based on the above, I find the tenancy ended on December 20, 2021, per section 44(1)(a)(ii) of the Act.

Pursuant to section 55(2)(b) of the Act, I award the landlords an order of possession.

Unpaid rent

I accept the undisputed testimony that the tenant did not pay rent due on December 01, 2021.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

Per sections 26(1), I award the landlords unpaid rent from December 01 to 20, 2021 in the total amount of \$568.00 ($\$852.00 / 30 \times 20$ days).

The landlords are at liberty to apply for compensation for overholding tenant.

Filing fee and summary:

As both parties were partially successful with their applications, each party will bear their own filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$400.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent	568.00
Deposit	400.00 (minus)
Total:	168.00

Conclusion

Pursuant to section 55(2)(b) 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.

Per section 26 of the Act, I authorize the landlords to retain the \$400.00 deposit and award the landlord \$168.00. This award is against tenant DS.

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 09, 2022

Residential Tenancy Branch