



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 09, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 06, 2021 (the “December Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed

The Tenant filed an Amendment on January 10, 2022, to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 06, 2022 (the “January Notice”). The Tenant filed a second Amendment on February 09, 2022, to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 06, 2022 (the “February Notice”).

The Tenant appeared at the hearing. The Landlord appeared at the hearing with O.P. as a translator. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided the correct spelling of their name which is reflected in the style of cause.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the disputes of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the “Notices”) and dismiss the remaining requests because they are not sufficiently related to the disputes of the Notices. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenant’s evidence. The Tenant testified that they did not receive the Landlord’s evidence. The Landlord testified that they served their evidence on the Tenant in person January 15, 2022.

I was not satisfied the Landlord served their evidence on the Tenant given the conflicting testimony and lack of documentary evidence to prove service. I found the Landlord failed to comply with rule 3.15 of the Rules. I heard the parties on whether the Landlord’s evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant submitted that the evidence should be excluded because they have no idea what it is. The Landlord submitted that the evidence should be admitted because it is the Landlord’s response to the Application.

Pursuant to rule 3.17 of the Rules, I excluded the Landlord’s evidence because I found it would be unfair to admit it when the Tenant had not seen it and therefore could not address it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the December Notice be cancelled?
2. Should the January Notice be cancelled?
3. Should the February Notice be cancelled?

Background and Evidence

The Tenant testified as follows in relation to a tenancy agreement in this matter. The Tenant moved into the rental unit in October of 2018. The Tenant had a verbal tenancy agreement with the previous owner of the rental unit. The tenancy is a month-to-month tenancy. The Tenant paid a \$400.00 security deposit. Rent is \$800.00 per month due on the 5th day of each month. The Landlord purchased the rental unit and became their landlord October 15, 2019.

The Landlord testified that they took possession of the rental unit October 15, 2020. The Landlord agreed this is a month-to-month tenancy. The Landlord agreed the Tenant paid a \$400.00 security deposit. The Landlord agreed rent is \$800.00 per month due on the 5th day of each month.

In relation to the December Notice, it states that the Tenant failed to pay \$3,200.00 in rent due December 06, 2021. The December Notice has an effective date of December 16, 2021. The Tenant did not take issue with the form or content of the December Notice when asked.

The parties agreed the December Notice was served on the Tenant and received December 06, 2021.

The Landlord testified as follows. The Tenant owed \$3,200.00 in rent when the December Notice was issued. The \$3,200.00 is comprised of unpaid rent from September of 2021 to December of 2021. The December Notice should state that \$3,200.00 in rent was due December 05, 2021, not December 06, 2021. The Tenant did not have authority under the *Act* to withhold rent. The Tenant has not paid any rent since the December Notice was issued. The Tenant previously paid rent by cheque each month.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

The Tenant testified as follows. The Tenant agrees \$3,200.00 in rent was outstanding when the December Notice was issued. The Tenant tried to pay rent in September of 2021 and the Landlord refused it. The Tenant took their September rent cheque to the Landlord in person and the Landlord would not take the cheque. The parties had a previous hearing on File 589 during which the parties tried to come to an agreement

about payment of rent. The Landlord just wants the Tenant out. The Tenant had paid the Landlord rent successfully since November of 2020, so for more than a year, when the Landlord stopped accepting rent. The Tenant pays rent each month by cheque. The Tenant does not pay rent by post-dated cheques. The Landlord is at the rental unit every day. The Tenant received the January 04, 2022 note from the Landlord stating:

All future rent payments can be mailed to [address] for rent address [address].

I asked the Tenant why they did not mail their rent cheques to the Landlord given the January 04, 2022 note. The Tenant testified that they cannot leave the rental unit due to their personal circumstances. The Tenant testified that they mailed their rent cheque for February of 2022 to the Landlord but they do not know what happened to it. I asked the Tenant why they did not provide evidence of mailing a rent cheque for February and the Tenant testified that a third party mailed it for them. I asked the Tenant why the third party did not obtain evidence of mailing the cheque and the Tenant testified that they did not think of doing so because they did not know this would be an issue. I asked the Tenant why there are no communications between the parties before me showing the Tenant trying to pay rent or showing the Tenant arranging to attend the Landlord's residence in September to pay rent. The Tenant testified that they just showed up at the Landlord's residence in September. The Tenant testified that they are not able to send emails or text messages. The Tenant testified that the parties do not communicate except for when the Landlord is at the rental unit.

In reply, the Landlord denied that they have ever refused rent payments. The Landlord referred to the January 04, 2022 note in evidence. I asked the Landlord why they did not obtain evidence of themselves trying to obtain rent from the Tenant and the Landlord testified that they did not think to do so.

As stated above, the Landlord issued the Tenant further 10 Day Notices in January and February of 2022. I heard the parties on the January Notice and February Notice; however, it is not necessary to outline their testimony here given the decision below.

The parties agreed \$5,600.00 in rent is currently outstanding.

The only supporting evidence before me is the January 04, 2022 note from the Landlord.

File 589 was the Tenant's Application for Dispute Resolution regarding 10 Day Notices issued in October and November of 2021.

Analysis

Section 26(1) of the *Act* states:

26 (1) 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 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 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...

(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...

There is no issue that the Tenant owes \$800.00 in rent per month by the 5th day of each month pursuant to the tenancy agreement because the parties agreed on this.

There is no issue that the Tenant did not pay rent for September to December of 2021, for a total of \$3,200.00, because the parties agreed on this.

The issue is whether the Tenant tried to pay rent and the Landlord refused it. The Landlord testified that the Tenant did not try to pay rent and the Landlord did not refuse rent. The Tenant testified that they did try to pay rent and the Landlord refused it.

I prefer the testimony of the Landlord over the testimony of the Tenant for the following reasons.

I find it unlikely that the Landlord would refuse to accept rent when paying rent and obtaining rent goes to the heart of a tenancy agreement. It does not accord with common sense that the Landlord would reject money for no apparent reason. I acknowledge that the Tenant submitted that the Landlord is refusing rent to get the Tenant out of the rental unit; however, I do not find there is any compelling evidence before me to support this claim.

Further, I do not accept that the Landlord is simply trying to get the Tenant out of the rental unit by rejecting rent payments because the Landlord accepted rent payments from the Tenant for 10 months prior to September of 2021. It does not make sense that the Landlord would accept rent for 10 months and then suddenly start rejecting rent for no apparent reason.

There is evidence before me that on January 04, 2022, the Landlord provided the Tenant a handwritten note stating that the Tenant can mail rent cheques to the Landlord at the address provided. I find it unlikely that the Landlord would provide this note to the Tenant if the Landlord was set on rejecting rent cheques or was trying to avoid receiving rent so that they could evict the Tenant.

I note that it was always open to the Tenant to mail rent cheques to the Landlord and that the Tenant had the Landlord's address on the Notices. The Tenant could have sent rent cheques by registered mail thus creating a paper trail showing rent cheques were mailed to the Landlord. The Tenant could have sent rent cheques by regular mail and obtained a photo or video of the Tenant mailing the cheques. I acknowledge that the Tenant testified that they could not leave the rental unit; however, the Tenant could have had a third party mail the rent cheques to the Landlord.

Further, the Landlord confirmed in the handwritten note dated January 04, 2022, that the Tenant could mail their rent cheques to the Landlord's address, yet the Tenant failed to pay rent in January and February of 2022. The Tenant testified that they mailed their rent cheque for February of 2022 to the Landlord but they do not know what happened

to it. I find it unlikely that the Tenant tried unsuccessfully to pay rent for five months and that in addition the Tenant mailed February rent and it happened to get lost in the mail. I find the chances of the Tenant's version of events occurring to be very small.

I find it unlikely that the Landlord would go through the trouble of serving the Tenant with 10 Day Notices every month from October of 2021 to February of 2022, and in addition incur a monetary loss of \$5,600.00, just to get the Tenant out of the rental unit.

I note that there are numerous ways in which the Tenant could have obtained evidence showing they tried to pay rent to the Landlord such as:

- Providing a photo of the rent cheques made out to the Landlord
- Providing a photo or video of the Tenant trying to give rent cheques to the Landlord
- Having a witness present when they tried to pay rent to the Landlord so that the witness could provide a written statement or appear at the hearing and provide testimony
- Providing a photo or video of the Tenant or a third party mailing rent cheques to the Landlord
- Mailing rent cheques to the Landlord by registered mail which includes tracking information for the package

Yet the Tenant has not submitted any documentary evidence to show that they tried to pay rent to the Landlord and the Landlord refused it. I acknowledge that the Landlord has the burden to prove the grounds for the December Notice. I also acknowledge that the only evidence before me to support the Landlord's position is the January 04, 2022 note. However, the Landlord was not obligated to try each month to obtain rent from the Tenant. It is the Tenant who was obligated to ensure rent was paid to the Landlord each month. Given this, I find the absence of evidence from the Tenant showing they tried to pay rent each month more concerning than the fact that there is only the January 04, 2022 note before me to support the Landlord's position.

In all the circumstances, I find the Landlord's version of events more likely than the Tenant's version of events and I accept the Landlord's version over that of the Tenant's version. Therefore, I find the Tenant failed to pay rent from September of 2021 to December of 2021.

The Tenant did not point to authority under the *Act* to withhold rent for September of 2021 to December of 2021 and therefore I find the Tenant was required to pay \$800.00 in rent each month by the 5th day of each month pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the December Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the parties, I accept that the December Notice was served on the Tenant December 06, 2021.

Upon a review of the December Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the December Notice states that rent was due December 06, 2021, rather than December 05, 2021; however, this does not invalidate the December Notice as the Tenant was aware of when rent was due. Further, the Tenant did not take issue with the form or content of the December Notice when asked.

The Tenant had five days from receipt of the December Notice on December 06, 2021, to pay the outstanding rent or dispute the December Notice pursuant to section 46(4) of the *Act*.

There is no issue that the Tenant did not pay the outstanding rent within five days of receiving the December Notice because the parties agreed on this. The Tenant took the position that the Landlord would not accept the rent which I have not accepted as explained above. Therefore, I find the Tenant failed to pay the outstanding rent as required.

The Tenant disputed the December Notice in time; however, the basis for the dispute is that the Landlord would not accept rent payments which I have not accepted and therefore the Tenant's dispute of the December Notice is dismissed without leave to re-apply.

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...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 found the December Notice complies with section 52 of the *Act*. I have also dismissed the Tenant's dispute of the December Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Pursuant to section 68(2) of the *Act*, I order the tenancy ended March 25, 2022, the date of the hearing.

Pursuant to section 55(1.1) of the *Act*, the Landlord is entitled to a Monetary Order for monies owing from September 05, 2021, to March 25, 2022, being:

- $\$800.00 \times 6 \text{ months} = \$4,800.00$
- $\$800.00 / 31 \text{ days} = \$25.80 \text{ per day} \times 21 \text{ days of March} = \541.80
- Total = \$5,341.80

The Landlord is issued a Monetary Order for \$5,341.80 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$5,341.80. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) 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 *Act*.

Dated: March 30, 2022

Residential Tenancy Branch