



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, RR, PSF, LAT, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice");
- to dispute a rent increase from the Landlord,
- an Order to reduce the rent for repairs, services or facilities agreed upon but not provided.
- an Order for services or facilities required by the tenancy agreement or law;
- authorization for the Tenant to change the lock;
- to suspend or restrict the Landlord's right to enter; and
- to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, K.S., and three agents for the Landlord, J.S., A.S., and P.R. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

When we considered service of the Notice of Hearing, the Application and the Parties' evidentiary submissions, the Tenant advised that he had not served the Landlord with these documents. The Landlord said that he knew about the process through contact from the RTB.

I advised the Tenant that as an applicant, he was required to serve these documents on the Respondent in this dispute resolution proceeding, pursuant to the Act and the Rules.

I reproduced the relevant Rules below. The requirements within these Rules are consistent with the principles of natural justice and administrative fairness, with which administrative hearings, such as this, must be conducted.

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

[underlining emphasis added]

There may be some evidence on which the applicant wants to rely that is not available at the time the applicant applies to the RTB for dispute resolution. The applicant may submit this evidence to the RTB and serve it on the respondent(s), as soon as possible, but not more than 14 days before the hearing, as provided under Rule 3.14.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the

event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

[underlining emphasis added]

If you need any of this explained further, please don't hesitate to call the RTB and speak with an information officer for clarification of any residential tenancy matter.

In light of the above, I dismiss the Tenant's Application without leave to reapply.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2021, with a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security nor a pet damage deposit.

The Agents said that the tenancy arose when the Tenant was kicked out of where he

was living. The Agents said that the Landlord had a vacant rental unit and said the Tenant could rent there until he “got back on his feet”. However, the Agents said that the Tenant never paid any rent or utilities and has continued living there. They said: “And the utilities payment? My Dad’s been paying out of his pocket. We have upstairs renters, and they said that [the Tenant] has not paid the utilities,”

As the Tenant’s Application is dismissed, I must determine whether the Landlord is entitled to an order of possession of the rental unit, and also a monetary order pursuant to section 55 (1.1).

The Landlord had submitted a copy of the 10 Day Notice, which was signed and dated October 7, 2021; it has the rental unit address. The 10 Day Notice was served in person on October 7, 2021, with an effective vacancy date of October 17, 2021, and it was served on the grounds that the Tenant failed to pay \$3,000.00 in rent and utilities owing to the Landlord on October 1, 2021. The Landlord said that the Tenant has continued to fail to pay rent and utilities for the rental unit. The Agents advised me that the Tenant has made the following payments,

Date Rent Due	Amt Owing	Amt Received	Amt. Owing
June 2021	\$0.00	\$0.00	\$0.00
July 2021	\$1,000.00	\$1,000.00	\$0.00
August 2021	\$1,000.00	\$0.00	\$1,000.00
September 2021	\$1,000.00	\$0.00	\$1,000.00
October 2021	\$1,000.00	\$0.00	\$1,000.00
November 2021	\$1,000.00	\$0.00	\$1,000.00
December 2021	\$1,000.00	\$0.00	\$1,000.00
January 2022	\$1,000.00	\$1,000.00	\$0.00
February 2022	\$1,000.00	\$0.00	\$1,000.00
	TOTAL		\$6,000.00

The Tenant said:

I was never told about utilities. I have a different narrative. My Aunt and Uncle

and their kids had a different agreement with me – different stories. They never told me about utilities. They never told me. I didn't offer to pay . . . I didn't know what was going on.

They said I could live there for free, 'until you get on your feet'. They said to pay this much for rent, once you find a roommate - to pay \$1,550.00. T

I asked the Tenant what terms he agreed to and he said:

A few months free until I'm on my feet, and then \$1,000.00. My Aunt said \$500.00, and I said \$1,000.00 would be fair. I found work, but ..., that's when they gave me the 10 Day Notice. The son called me, saying we're doubling the rent, blah, blah. . . . There's nowhere to go; it's going to be rough to find a place.

The Agents said:

He paid for July 2021, but he owes for August through December. He paid in January, but February [2022] is owing. He's paid \$2,000.00 since living there since June.

I asked the Tenant why I should not give the Landlord an order of possession, and he said:

I can get the rest of the money; they want to increase the rent. A few weeks ago, I made a plan again. I was going to pay them, and now . . . this hearing. I made the plan with them.

I asked the Tenant what his plan was, and he said:

I gave them a \$1,000.00, and I said I would pay the rest, and they were going to let me continue to live there. I assumed everything was all good.

The Agents said:

We never had a plan. We took the \$1,000.00 to help with the mortgage. Both of my parents are retired, My Mom never would have agreed to \$500.00 - they are both retired. My Mom is on disability and my dad is retired. It would make no sense to take below market rent.

The Agents said that the rental unit had been previously rented out for \$850.00. They said:

However, that renter cut the grass, painted his suite, and he was a caretaker, as well. And he would share the utilities with the other tenants, and they would pay amongst themselves.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on October 7, 2021, when it was delivered to him in person.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me that the Tenant had a right to deduct any rent owing to the Landlords. In the hearing, the Landlord's undisputed evidence was that he was owed \$6,000.00 in unpaid rent as of February 1, 2022.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$3,000.00 is incorrect, as it was based on the outstanding rent owed when the 10 Day Notice was served. However, the Tenant has continued to fail to pay rent to the Landlord, except for January 2022.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

(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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I confirm the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a **Monetary Order** pursuant to the Tenants' Application. I, therefore, award the Landlord with **\$6,000.00** from the Tenant, pursuant to sections 55 (1.1) and 67 of the Act.

As the Tenant failed to serve the Landlord with the Notice of Hearing, Application and his evidentiary submissions, the Tenant's Application was dismissed wholly without leave to reapply.

Based on the evidence before me overall, I award the Landlord an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for February 2022, the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

Conclusion

The Tenant failed to serve the Landlord with his Notice of Hearing documents, Application, and his evidentiary submissions, contrary to the Act and Rules. Further, I have found that the Tenant has not paid rent for six of the last eight months. Accordingly, the Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to the Landlord's evidence and section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a **Monetary Order** of **\$6,000.00** from the Tenant, pursuant to sections 26, 46, 55 (1.1), and 67 of the Act.

This Order must be served on the Tenant by the Landlord and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 02, 2022

Residential Tenancy Branch