



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR; MNDCT, RP, CNR, LRE, LAT, OLC, FFT

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent of \$4,945.00, pursuant to section 67.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order of \$14,700.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 13, 2022 ("10 Day Notice"), pursuant to section 46;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

The landlord's two agents, "landlord MR" and "landlord BE," the "owner" (CT) of the rental unit, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 58 minutes.

This hearing began at 1:30 p.m. with me, the landlord's two agents and the owner present. The tenant called in late at 1:32 p.m. I did not discuss any evidence in the absence of the tenant. This hearing ended at 2:28 p.m.

All hearing participants confirmed their names and spelling. Landlord MR and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

Landlord MR stated that she was a property manager for the landlord company ("landlord") named in this application. She said that landlord BE was a project manager for the landlord. The owner confirmed that he owns the rental unit, the landlord is his authorized property management company, and he gave permission to landlord MR and landlord BE to speak on his behalf at this hearing. Landlord MR confirmed the rental unit address. Landlord BE and the owner did not testify at this hearing. The owner selected landlord MR as the primary speaker for the landlord at this hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The landlord's two agents, the owner, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing, they did not want to settle these applications, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Landlord MR confirmed receipt of the tenant's application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution and notice of hearing.

The tenant testified that he served the landlord with his first evidence package on January 19, 2022 and second evidence package on March 26, 2022, by way of emails and leaving copies in the landlord's office mail slot. Landlord MR stated that the landlord did not receive any of the tenant's evidence packages, as the landlord only received the application for dispute resolution and the notice of hearing in the office mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's first evidence package on January 22, 2022 and the second evidence package on March 29, 2022, three days after each evidence package was left in the landlord's mail slot. I also note that the landlord provided copies of many of the same emails provided by the tenant in his application evidence.

The tenant confirmed receipt of the landlord's 10 Day Notice, by way of posting to his rental unit door. In its application, the landlord indicated that that the notice was posted to the tenant's door on January 13, 2022. In his application, the tenant confirmed receipt of the notice on January 13, 2022, by way of posting to his door. The landlord also provided a signed, witnessed proof of service indicating that the notice was posted to the tenant's door on January 13, 2022. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on January 13, 2022. The tenant filed his application to dispute the notice on January 18, 2022.

Preliminary Issue – Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include rent from February to April 2022. The landlord originally filed its application on January 24, 2022, prior to the rent being due from February to April 2022.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. Further, the tenant provided testimony and submissions regarding the above unpaid rent from February to April 2022, at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent.

Preliminary Issue – Dismissal of Tenant’s Monetary Application

During this hearing, the tenant stated that he was seeking 12 months’ rent compensation, totalling \$14,700.00, for being “renovicted” by the landlord. He said that he did not think he would get this amount, but he wanted to apply for the maximum that he could, to see if he could get anything from the landlord.

The tenant said that he did not move out of the rental unit, nor did he receive a copy of a Two Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) or a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (“4 Month Notice”), from the landlord.

Sections 49, 51 and 52 of the Act, state in part (my emphasis added):

- 49 (2) Subject to section 51 [tenant's compensation: section 49 notice], a **landlord may end a tenancy**
 (a) for a purpose referred to in subsection (3), (4), (5) or (6) **by giving notice to end the tenancy** effective on a date that must be
 (i) not earlier than **2 months** after the date the tenant receives the notice,
 ...
 (b) for a purpose referred to in subsection (6) **by giving notice to end the tenancy** effective on a date that must be
 (i) not earlier than **4 months** after the date the tenant receives the notice,
 ...
 (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
- 51 (2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of **12 times the monthly rent payable** under the tenancy agreement if
 (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

52 **In order to be effective, a notice to end a tenancy must be in writing and must**
(e) when given by a landlord, be in the approved form.

It is undisputed that the tenant did not receive a 2 Month Notice or a 4 Month Notice in the approved RTB form from the landlord, as required by sections 49 and 52 of the *Act*. It is undisputed that the tenant did not move out of the rental unit, as he continues to reside there, to date.

Accordingly, the tenant's application to recover twelve months rent compensation totalling \$14,700.00, pursuant to section 51 of the *Act*, is dismissed without leave to reapply. I informed the tenant about my decision verbally during this hearing.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to an order requiring the landlord to complete repairs to the rental unit?

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Is the tenant authorized to change the locks to the rental unit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for his application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of both parties' claims and my findings are set out below.

Landlord MR and the tenant agreed to the following facts. This tenancy began on October 1, 2020. A security deposit of \$612.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Both parties agreed that rent under the original tenancy agreement was \$1,225.00 per month. Landlord MR stated that the monthly rent was increased, effective January 1, 2022, pursuant to a Notice of Rent Increase, dated September 15, 2021 ("NRI"). She said that this notice was served to the tenant on September 15, 2021, by way of regular mail. She claimed that the rent was increased from \$1,225.00 to \$1,240.00, an increase of \$15.00, which is 1.5% as allowed under the RTB *Regulation* amount. A copy of the NRI was provided by the landlord for this hearing. The tenant stated that he does not recall receiving the NRI or he would have paid the new rent to the landlord in January 2022. Landlord MR stated that the tenant has not paid any rent to the landlord, since January 2022.

Landlord MR stated the following facts. The landlord seeks an order of possession for unpaid rent based on the 10 Day Notice, against the tenant. The 10 Day Notice was issued for unpaid rent of \$1,225.00, due on January 1, 2022. She mistakenly included the former rent amount of \$1,225.00, instead of the new rent amount of \$1,240.00 on the notice. Therefore, the landlord is only seeking the former rent of \$1,225.00 for January 2022, but the tenant is required to pay the increased rent of \$1,240.00 from February to April 2022. The tenant failed to pay rent of \$1,225.00 for January 2022, and \$1,240.00 for each month from February to April 2022, totalling \$4,945.00. The landlord seeks a monetary order of \$4,945.00 for the unpaid rent from the tenant.

The tenant testified regarding the following facts. He did not pay any rent to the landlord from January to April 2022. The landlord sent him an email saying that he did not have to pay any rent from January onwards because there was water damage in the rental unit. The landlord caused a burst pipe and water damage by failing to properly insulate the walls, as per the tenant's photographs. The tenant was unable to get tenant's insurance during the covid-19 pandemic, so he does not have any coverage for hotel or other expenses. The tenant intended to move out of the rental unit, but he could not find a place to move to, the landlord will not give him a rental reference now, and he has no friends or family here to help him. The tenant had to clean up everything himself with no help and the landlord still has not fixed the water damage. The tenant is

being “renovicted” by the landlord. The landlord has to renovate the unit, pay for the tenant to stay in a hotel for free during the renovations, and offer the unit back to the tenant after the renovations.

Landlord MR stated the following facts. There was a burst pipe causing major water damage to the rental unit and another unit at the rental property on December 27, 2021. The landlord received an emergency call from the occupant in the other unit regarding the burst pipe and that occupant also told the tenant about it. That other occupant turned off the water at the rental property because there was no plumber available, due to the snowy weather at the time. The landlord contacted the owner and the insurance company, but the tenant said that he did not have any tenant’s insurance for the rental unit. The landlord offered the tenant free rent from December 27 to 31, 2021, and agreed to refund the tenant’s security deposit, if the tenant moved out of the rental unit. The tenant sent the landlord an email, stating that he was moving out because he was sick. The rental unit was uninhabitable, the lease was frustrated, and this is not a “renoviction” as claimed by the tenant. The tenant continued to stay at the rental unit and not pay any rent to the landlord from January to April 2022. The other occupant was offered the same deal as the tenant for free December 2021 rent and moved out on January 15, 2022. That unit is still being repaired and the landlord does not know when it will be complete. The tenant’s rental unit has not been fixed yet because the landlord and the restoration company do not have access to the rental unit. The tenant changed the locks and did not provide a key to the landlord. The restoration company cannot access the rental unit or complete any work because of the tenant denying access to the unit. The insurance company keeps asking the landlord about what is occurring in the rental unit. The tenant sent an email to the landlord on January 5, 2022, stating that he was going to move out and on January 10, 2022, the tenant sent another email to the landlord, stating that there was a “sewer smell” in the rental unit. However, the tenant is still living at the rental property.

The tenant stated the following facts. He gave a key to the landlord, but it is not his fault that the landlord lost the key. The tenant did not deny access to anyone, as he let landlord BE and other people into the rental unit to take photographs. The rental unit smells really bad, there is water behind the walls, and the landlord has to replace the ceiling where the pipe burst. The tenant should be entitled to pay for reduced rent to the landlord.

Analysis

10 Day Notice

On a balance of probabilities and for the reasons stated below, I find that the landlord provided sufficient documentary and testimonial evidence at this hearing.

I find that the tenant failed to pay the full rent due on January 1, 2022, within five days of receiving the 10 Day Notice on January 13, 2022. The tenant filed an application on January 18, 2022, to dispute the notice, pursuant to section 46(4) of the *Act*, which is within 5 days of receiving the notice. However, the tenant agreed at the hearing that he did not pay any rent to the landlord from January to April 2022.

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

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.

In this case, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. I find that the tenant does not have a right under the *Act* to deduct all or a portion of rent. The tenant did not provide an order from an Arbitrator to deduct rent, nor did the tenant provide any evidence of paying for emergency repairs that he deducted from rent, as per section 33 of the *Act*.

I find that the landlord's emails to the tenant, copies of which were provided by both parties for this hearing, state that the landlord would refund the tenant's rent from December 27 to 31 and return the tenant's security deposit, if the tenant returned the keys to the landlord, vacated the rental unit, and provided his forwarding address to the landlord. Both parties agreed that the tenant did not vacate the rental unit, return his keys to the landlord, or provide his forwarding address to the landlord. I find that the emails do not state that the tenant is entitled to free future rent for any specific months or indefinitely. Therefore, I find that the tenant is not entitled to live at the rental unit without paying any rent to the landlord from January to April 2022.

I also note that the tenant sent an email to the landlord, dated January 5, 2022, stating "Yes I will be at house on Friday packing up for the move..." The tenant did not dispute this email that was referenced by landlord MR during this hearing. Therefore, the tenant told the landlord that he would be moving out of the rental unit and then failed to vacate.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on January 26, 2022, the corrected

effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 26, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I dismiss the tenant's application to cancel the landlord's 10 Day Notice, without leave to reapply.

Tenant's Other Application Claims

As this tenancy is ending, I do not need to decide the tenant's remaining application claims for an order requiring the landlord to complete repairs to the rental unit, an order restricting the landlord's right to enter the rental unit, authorization to change the locks to the rental unit, and an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement. These claims only relate to an ongoing tenancy. The above claims are all dismissed without leave to reapply.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Monetary Order for Unpaid Rent

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I accept the affirmed testimony of landlord MR and the documentary evidence of the NRI provided by the landlord for this hearing, that the monthly rent was legally increased from \$1,225.00 to \$1,240.00, as per the allowable *Regulation* amount of 1.5%, effective January 1, 2022. I find that the tenant was deemed served with the NRI on September 20, 2021, five days after its regular mailing on September 15, 2021.

Although the tenant claimed that he does not recall receiving the NRI from the landlord or he would have paid it, the tenant has not paid any rent to the landlord since the increase took effect in January 2022. Although the landlord put the former rent amount of \$1,225.00 (instead of \$1,240.00) on the 10 Day Notice for January 2022, and the landlord only seeks this rent amount from the tenant for January 2022, landlord MR

stated that it was a mistake for which the landlord would be responsible for that month. Therefore, I find that the NRI is still valid and effective.

The landlord provided sufficient evidence that the tenant failed to pay rent of \$1,225.00 for January 2022, and rent of \$1,240.00 for each month from February to April 2022, totalling \$4,945.00. The tenant agreed that he did not pay any rent to the landlord from January to April 2022. Therefore, I find that the landlord is entitled to a monetary order of \$4,945.00 in unpaid rent from the tenant.

Although this hearing occurred on April 14, 2022, I find that the landlord is entitled to one full month's rent for April 2022 of \$1,240.00. I accept the testimony of both parties that the landlord has not taken back possession of the unit and the tenant is still residing there. Moreover, rent is due on the first day of each month, as per the landlord's evidence and the tenancy agreement.

The landlord continues to hold the tenant's security deposit of \$612.50. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$612.50 in partial satisfaction of the monetary award.

The landlord is entitled to a monetary order of \$4,945.00 for unpaid rent. The security deposit of \$612.50 is deducted from the above amount, leaving a balance of \$4,332.50. The landlord is provided with a monetary order for \$4,332.50 against the tenant.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$612.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$4,332.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the

tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: April 14, 2022

Residential Tenancy Branch