



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNL, RR, AS, MNDCT, OLC, CNR, PSF, RP
For the Landlord: OPU-DR, MNU-DR, FFL

Introduction

On January 14, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Two-Month Notice");
- b. for a reduction in rent for repairs, services or facilities agreed upon but not provided;
- c. for allowance to assign or sublet, with the Landlord's permission being unreasonably withheld;
- d. for compensation for monetary loss or other money owed;
- e. for the Landlord's compliance with the legislation and/or the tenancy agreement.

On February 28, 2022, they submitted a second Application:

- f. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice");
- g. for the Landlord's compliance with the legislation and/or the tenancy agreement;
- h. for compensation for monetary loss or other money owed;
- i. for repairs made to the rental unit, after contacting the Landlord in writing;
- j. for a reduction in rent for repairs, services or facilities agreed upon but not provided;
- k. for a suspension or set conditions on the Landlord's right to enter the rental unit;
- l. for the provision of services or facilities required by the tenancy agreement or law;
- m. for allowance to assign or sublet, with the Landlord's permission being unreasonably withheld;

On March 1, 2022 the Landlord applied for an order of possession of the rental unit, and recompense of unpaid utilities amounts. This was in line with the 10-Day Notice they issued on February 21, 2022. Additionally, they applied for reimbursement of their Application filing fee. The Landlord filed this as a Direct Request; however, this application could not be considered by that method when there was a prior extant request from the Tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 12, 2022. Both parties attended the teleconference hearing.

Preliminary Matter – evidence disclosure

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties’ submission and provision of evidence to the Branch and each other. This sets timelines for doing so.

At the outset of this hearing, the Landlord advised they were receiving evidence from the Tenant directly via email from the Tenant the night prior to the hearing, in large volume.

I advised the parties at the outset of the hearing that late evidence may or may not be considered depending on the scenario and the way it is relied upon by either party. On any relevant piece, I would decide whether the Landlord had sufficient disclosure, and whether they needed an opportunity to review a specific piece that was identified in the hearing. This was an Application of Rule 3.17. I continued with the hearing with the understanding from each party that disclosure was not completed properly for all evidence in this matter, and each party indicated their understanding and awareness of this.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the Notices to End Tenancy issued by the Landlord. These are: a. the Two-Month Notice, and f. the 10-Day Notice.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes “related issues”, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the landlord. By Rule 6.2, I do not consider the other issues listed above, b. through e., and g. through m. By Rule 2.3 I find the other issues are unrelated and I amend the Tenant's Application to exclude these matters. The Tenant has leave to reapply on these other grounds. This means they may file a new and separate application to address the other issues, and this does not preclude proper consideration of these issues by another arbitrator.

Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice?

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion below are set out in this decision.

Each party provided a copy of the tenancy agreement. This was in existence before the Landlord here acquired the property in November 2021. The Tenant described how the agreement was drawn up in favour of their prior landlord on particular issues not relevant to the present matter. The agreement sets out the rent amount of \$2,250 which did not change over the course of the tenancy. The agreement also states, in paragraph 15, that "The Tenant is responsible for the payment of 60% of hydro usage."

The Landlord presented this was their understanding of the arrangement for utilities. They gave their estimation that the Tenant occupies 70% of the total square footage of this house, in which the Landlord occupies the adjacent unit. The Tenant maintained that the division of the utility amount was based on number of occupants.

The Landlord issued the 10-Day Notice on February 21, 2022. A copy of this appears in both parties' evidence, and the Tenant acknowledged receiving the 10-Day Notice, then applying to the Residential Tenancy Branch to dispute that within the legislated 5-day timeframe as set out on the 10-Day Notice document.

The 10-Day Notice gives the end-of-tenancy date, on which the Tenant must move out, as March 3, 2022. Page 2 of the document shows the Landlord's indication that the Tenant failed to pay utilities in the amount of \$872.76, following written demand from the Landlord on January 21, 2022.

In their evidence, the Landlord provided this "30 Day Written Demand Letter" dated January 21, 2022. Stated simply: "We are providing you with a copy of the Hydro Bill for the billing period of November 18th 2022 – January 17th 2022. Your portion at 60% is \$872.76. Please pay your portion by Feb 21st 2022." A separate document, the "Proof of Service", sets out that the Landlord served this document to the Tenant by attaching it to the door of the rental unit on January 21, 2022 at 8:45am.

The Landlord also provided a copy of the BC Hydro invoice, showing the billing date of January 19, 2022. This shows the billing period as stated in the Landlord's letter to the Tenant, with the total amount of \$1,454.60.

In the hearing, the Landlord set out they received a payment of \$581.80, which represents 40% of the total amount of the bill. They showed the Tenant's e-transfer transaction to them, as printed out, for the transaction on February 22, 2022 at 5:12am. In addition, they received the remaining amount -- \$290.92 -- on the morning of the hearing. In spite of this, the Landlord stated their clear intention to proceed with ending the tenancy, and the payments received do not cancel out their Application here for an Order of Possession based on unpaid utilities.

On their Application to dispute the 10-Day Notice, the Tenant acknowledged the "30 day demand letter" for the utilities given to them by the Landlord on January 21. This "was to be paid by 21st of Feb. 2022." This "gives me until Midnight on the 21st. which I paid my portion of hydro which is 40% based on amount of occupants." Further: "Landlord got over anxious and served notice a day early on the 20th to my son. I still had until the 21st which he should have filed if not paid on the 22nd of Feb."

In the hearing the Tenant re-stated this 10-Day Notice was issued too early, and didn't extend to 31 days which would be until midnight on February 22. They are disputing the 10-Day

Notice “because it was served wrong”, meaning too early according to the Landlord’s own demand for payment of the utility amount.

The Tenant also provided an earlier BC Hydro bill to show an amount paid for approximately 17 days, though the copy in their evidence is for a billing period from November 3 to 17, 2021. That amount was \$171.53, and the Tenant’s point here is that the amount in question from the Landlord on the 10-Day Notice was “crazily high”, in light of the fact that the Tenant is not present at home for two weeks of each month.

The Tenant also stated this hearing was hastily scheduled and they have not had ample opportunity to prepare evidence showing past Hydro billing patterns. The Landlord objected to this, stating old utility bills would be “hearsay.”

Analysis

The *Act* s. 46(6) provides authority for a landlord to issue a notice to end a tenancy, treating unpaid utility charges as unpaid rent, where:

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them

In this dispute, the Landlord made a written demand to the Tenant for unpaid utilities on January 21, 2022. That date is established clearly in the Landlord’s evidence on the letter they provided to the Tenant on that date. Counting 30 days forward from that date, the final date for payment from the Tenant is February 20, 2022. The Landlord demanded payment from the Tenant, as provided in the letter, by February 21, 2022. I find that is the final date on which the Tenant could have made payment.

Though the Tenant indicated they made a payment to the Landlord on that date, and had the right to do so until midnight on that date, there is no record that they did so. They made their partial payment of the request amount on the following morning on February 22nd, which is, alternately, one-day past the Landlord’s specified date, and past 30 days in either case.

I find the Landlord issued the 10-Day Notice past the 30-day timeline. The Tenant submits the Landlord served this early in this situation. I find it is not early, coming after 30 days had expired on the Landlord’s written demand. To be clear: February 21, the date indicated in the Landlord’s letter, is the day *after* 30 days expired. I find the 10-Day Notice was validly issued, and the Landlord served that 10-Day Notice in line with s. 46(6)(b).

There was no record of the Tenant challenging, or negotiating, the requested amount with the Landlord in that timeframe. By this point, communication between the parties had become strained due to the other issues of repairs and the other notice to end the tenancy issued by the Landlord in December. The Tenant did not pay the requested amount, and only did so for what they feel was a correct percentage amount, after the Landlord's specified date. I find the tenancy agreement – provided by both parties in evidence for this hearing and therefore well within the scope of their knowledge – was explicit on the percentage amount owed by the Tenant for their rental unit utilities. Further, there is no record provided by the Tenant that they attempted to pay and were prevented or otherwise blocked from doing so.

In sum, I find the Tenant had the avenue to negotiate payment amounts with the Landlord; however, they provided no evidence that they attempted to do so, or otherwise tried to pay the full amount to work it out later. Because the Tenant signed the tenancy agreement, and was aware of the terms therein, they were prevented from asserting their position on proper utility amounts in the manner they did so here, by withholding payment. This is because they agreed to the 60% amount by law and there was no other agreement superseding that.

The Tenant was obligated to pay for the utility in line with the tenancy agreement, and had no right to reduce any amount unilaterally. This was a breach of the tenancy agreement, and s. 46(6) applies in this scenario. I dismiss the Tenant's Application for cancellation of the 10-Day Notice for this reason, and the tenancy is ending.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

While the *Act* s. 55(1.1) specifies that I must grant repayment of unpaid utilities (which by s. 46(6) is treated the same as unpaid rent), in this situation the Landlord provided that the Tenant completed payment of the full amount owing on the morning of this scheduled hearing. Because of this I make no separate monetary order for the amount the Landlord claimed on their Application.

Because the Landlord was successful on their Application, I find they are eligible for reimbursement of the Application filing fee. I grant the Landlord a Monetary Order for that amount.

The validity of the separate Two-Month Notice issued by the Landlord on December 29, 2021 is not at issue. I dismiss this part of the Tenant's Application because the tenancy is ending for the reason of unpaid utilities.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I grant an Order of Possession to the Landlord, effective TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$100, pursuant to s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 13, 2022

Residential Tenancy Branch