



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, RP**

Introduction

This hearing dealt with the Tenant's application for dispute resolution ("Application") pursuant to the *Residential Tenancy Act* (the "Act"). The Tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 2, 2022 ("10 Day Notice") pursuant to section 46;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32; and
- a Monetary Order for compensation from the Landlord pursuant to section 67.

An agent ("WS") for the Landlord 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.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding ("NDRP") in-person. WS acknowledged the NDRP was received from the Tenant by an employee of the Landlord. I find the NDRP was served on the Landlord in accordance with section 89 of the Act. The Tenant stated he did not serve any evidence on the Landlord.

WS stated the Landlord had not served any evidence on the Tenant.

Preliminary Matter – Change of Respondent

At the outset of the hearing, I noted that the 10 Day Notice stated the Landlord was a corporate entity ("AP") while the Application stated WS was the Landlord. WS stated that the Landlord is AP and that she is an agent for AP. WS requested that I amend the Application to remove her as a respondent and to add AP as a respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the amendment requested by WS could reasonably be anticipated by the Tenant, I amended the Application to remove WS as a respondent and to add AP as a respondent.

Preliminary Matter – Severance and Dismissal of Tenants’ Claim

The Tenant’s application included a claim for compensation of \$1,400.00 for monetary loss or other money owed by the Landlord. Rule 2.3 of the Rules states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Tenant’s application was whether the tenancy would continue or end based on the 10 Day Notice to end tenancy. Accordingly, I find the Tenant’s claim for (i) compensation for \$1,400.00 from the Landlord and (ii) an order that the Landlord completed repairs on the rental unit were not sufficiently related to the primary issue of whether the 10 Day Notice to end tenancy are upheld or set aside. Based on the above, I dismiss the Tenant’s claim, with leave to reapply, for compensation from the Landlord. The Tenant has the option of

making another application for dispute resolution to make the claim for compensation pursuant to section 72 of the Act. If the 10 Day Notice is cancelled, then I will dismiss, with leave to reapply, the Tenant's claim for an order requiring the Landlord perform repairs on the rental unit. If I issue an Order of Possession in favour of the Landlord, then I will dismiss the Tenant's claim, without leave to reapply, the Tenant's claim for an order requiring the Landlord perform repairs on the rental unit.

Preliminary Matter – Tenant's Request for Adjournment

At the outset of the hearing, the Tenant requested an adjournment of the hearing. The Tenant stated he had a medical condition that has not been stabilized. The Tenant stated he has been referred to a specialist and has been waiting for an appointment. The Tenant said that he has been suffering physical and mental health issues as a result of his medical condition and is suffering from depression. The Tenant stated the medical appointment was in 15 minutes. The Tenant did not submit any evidence, or call any witnesses, to corroborate his medical condition or that a medical appointment was imminent. When I asked the position of the Landlord, WS stated the Tenant has not paid the rent for the past four months and an adjournment would be prejudicial to the Landlord.

Rules 7.8 and 7.9 state:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;

- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

WS stated the Tenant has not paid any rent for the past four months and the Landlord wanted to have the Application heard now, rather than to be adjourned to a later date. I have considered the positions of the parties and I am not satisfied the Tenant took sufficient steps or measures to ensure the appointment with his physician did not conflict with the date and time of this hearing. The Tenant did not provide any evidence, or call any witnesses, to corroborate his medical condition or that a medical appointment was imminent. Based on the foregoing, I declined to adjourn the hearing, given the Tenant does not appear to have paid any rent for the past four months, the objection of the WS to an adjournment and the apparent neglect on the Tenant's part to ensure there was no scheduling conflict with this hearing.

Issues to be Decided

- Is the Tenant entitled to an order cancelling the 10 Day Notice?
- If the Tenant is not entitled to an order cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on August 19, 2021 with rent of \$700.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$350.00 by August 13, 2021. WS confirmed the Tenant paid the security deposit and that the Landlord was holding the deposit in trust for the Tenant. The Tenant stated he had not vacated the rental unit.

WS testified the 10 Day Notice was served on the Tenant's door on February 2, 2022. The Tenant acknowledged receipt of the 10 Day Notice. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

WS testified that, as set out in the 10 Day Notice, the Tenant had rental arrears of \$1,400.00 as of February 1, 2022. WS stated the Tenant now had rental arrears of \$2,800.00 for the months of February through May 2022, calculated as follows:

Date	Owed	Paid	Balance
01-Feb-21	\$700.00	\$0.00	\$700.00
01-Mar-21	\$700.00	\$0.00	\$1,400.00
01-Apr-21	\$700.00	\$0.00	\$2,100.00
01-May-21	\$700.00	\$0.00	\$2,800.00
Total	\$2,800.00	\$0.00	\$2,800.00

The Tenant testified the Landlord failed to perform repairs on the rental unit during the tenancy. The Tenant stated he had inadvertently chosen the “wrong route” to reclaim the costs. The Tenant stated it would not be fair to evict him from the rental unit on the basis of an honestly held view of his rights.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act 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 *[form and content of notice to end tenancy]*.
- (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.

The Landlord testified the 10 Day Notice was served on the Tenant’s door on February 2, 2022. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on February 5, 2022. Pursuant to section 46(4), the Tenant had until February 10, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch indicate the Tenant

made his application on February 4, 2022. Accordingly, the Tenant made his application within the 5-day dispute period required by section 46(4) of the Act

The Tenant stated he was excused from paying the rent for November 2021 because the Landlord failed to perform repairs on the rental unit. The Tenant stated he had inadvertently chosen the “wrong route” to reclaim the costs. The Tenant stated it would not be fair to evict him from the rental unit on the basis of an honestly held view of his rights.

Section 26 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.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether or not the landlord complies with the Act, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. The Act stipulates a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

None of the circumstances listed above are presently applicable. The failure of the Landlord to perform repairs is not relevant as it is not a reason a tenant is excused from paying the rent. The Act is unequivocal that the obligation to pay rent rests solely with the Tenant and makes no consideration for the circumstances described by the Tenant. The Act does not have any “hardship” provisions that would allow me to excuse the Tenant from paying the rent or

delaying granting an Order of Possession to the Landlord.

I find the Tenant owed the Landlord \$700.00 on February 1, 2022, as stated in the 10 Day Notice. As such, I find there was a valid reason for the Landlord serving the Tenant with the 10 Day Notice. Based on the above, I find there is no basis upon which to cancel the 10 Day Notice. Accordingly, the Tenant's claim for cancellation of the 10 Day Notice is dismissed.

Subsections 55(1) and 55(1.1) of the Act state:

- 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 [*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.
- (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 reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenant has not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on May 9, 2022.

2. Monetary Order for Unpaid Rent

I find the I find, pursuant to section 26(1) of the Act, the Tenant has rental arrears of \$2,800.00 for the months of February through May 2022. The Tenant must compensate the Landlord this amount. Pursuant to section 55(1.1) of the act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order the Tenant pay the Landlord \$2,800.00 in satisfaction of

the rental arrears.

Pursuant to section 72(2)(b) of the act, the Landlord may deduct the Tenant's security deposit of \$350.00 from the rental arrears owed by the Tenant, leaving a balance of \$2,450.00.

I dismiss the Tenant's claim for compensation of \$1,400.00 from the Landlord with leave to reapply. I dismiss, without leave to reapply, the Tenant's claim that the Landlord perform repairs on the rental unit.

Conclusion

Pursuant to section 55(1) of the Act, I order that the Tenants deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55(1.1) of the Act, I order that the Tenant pay the Landlord \$2,450.00 representing the following:

Description	Amount
Rental Arrears	\$2,800.00
Security and Pet Damage Deposits Credit	-\$350.00
Total	\$2,450.00

It is the Landlord's obligation to serve this Order on the Tenant. If the Tenant does not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Tenant's claim for compensation of \$1,400.00 for monetary loss or other money owed by the Landlord is dismissed, with leave to reapply. The Tenant's claim for an order that the Landlord complete repairs on the rental unit is dismissed without leave to reapply.

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: May 10, 2022

Residential Tenancy Branch