



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC, RP, PSF, LAT, OLC, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On February 17, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking provision of services or facilities pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On February 11, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they

were reminded to refrain from doing so. All parties in attendance provided a solemn affirmation.

It should be noted that the Tenant continued to interrupt during the hearing even after he was reminded of the expected conduct of the parties. After being warned, the Tenant would continue to behave in an inappropriate and disruptive manner to such an extent that it required muting him whenever it was not his opportunity to provide submissions.

In addition, during the hearing, the Landlord advised that she named the Respondent in a particular manner, as that was the name provided to her, and this was the only identity she knew of for her Tenant. The Tenant advised that his legal name was as it appeared on his Application. When he was asked what his name actually was, he stated that the name he provided on his Application was the name he provides to the police. When he was asked who the name was that appeared on the tenancy agreement, he claimed not to know. However, when he confirmed that he did sign this document with this other name on it, he then would either provide contradictory testimony about this name or he would claim that he did not know about any of the information on the tenancy agreement.

It was clear that the Tenant likely intentionally uses both names in an effort to evade police or mislead others. This was evident in the fact that he confirmed that he provides different names to different parties depending on the circumstance. I find that this conclusion is reinforced by the Tenant claiming not to know who the notices to end the tenancy were for, despite him disputing the notices. Consequently, I have amended the Style of Cause to reflect that this Decision will pertain to both identities of this individual. Furthermore, I find that the doubts created by the Tenant's dubious and contradictory claims about the differing names he provides causes me to question his credibility on the whole.

The Tenant advised that the Landlord was served with the Notice of Hearing package by hand on February 23, 2022, and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package.

He also advised that the Landlord was served with his documentary evidence package on March 11, 2022. Moreover, he stated that additional digital evidence was placed on a USB stick and served to the Landlord; however, he was unsure of when he did this. In

addition, he did not check to see if she could view this digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure.

The Landlord confirmed that she received the Tenant's documentary evidence of March 11, 2022. As well, she stated that she received an SD card with the Tenant's evidence on May 21, 2022, that she could not view this digital evidence, and that it was served too late. Given that this additional digital evidence was not served pursuant to the timeframe requirements of Rule 3.14 of the Rules of procedure, this evidence will be excluded and not considered when rendering this Decision. Only the Tenant's documentary evidence of March 11, 2022, will be accepted and considered when rendering this Decision.

The Landlord advised that the Tenant was served with her Notice of Hearing evidence package by registered mail on March 11, 2022 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was returned to sender. Based on this undisputed testimony and the evidence provided, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

The parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and the One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2021, that rent was currently established at an amount of \$750.00 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on February 2, 2022, by posting it to the Tenant's door. She submitted that \$750.00 was owing for rent on February 1, 2022, because the Tenant did not pay any of February 2022 rent. As well, she stated that he has not paid any rent since service of the Notice. The effective end date of the tenancy was noted on the Notice as February 28, 2022.

The Tenant claimed not to understand that the Notice was for him; however, he disputed both the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and the One Month Notice to End Tenancy for Cause. Given my earlier finding that he falsely provided a different name to the Landlord, I am satisfied that he knew that these notices to end his tenancy were for him and that is why he disputed them. He stated that he did not dispute the notices on time as he was attempting to communicate with the Landlord. Furthermore, he confirmed that he did not pay any rent for February 2022 because he warned the Landlord that he would not do so due to a matter that he was upset about. He acknowledged that he did not have any authority under the *Act* for withholding the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The evidence before me is that the Tenant likely received the Notice on or around February 2, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was posted to the door on February 2, 2022, the Notice would have been deemed received on February 5, 2022. As such, the Tenant must have paid the rent in full or disputed the Notice by February 10, 2022 at the latest. Given that the Tenant applied for more time to cancel the Notice, I am satisfied that the Notice was more likely than not posted on the door on February 2, 2022, and received after that. Clearly then, the Tenant likely disputed this Notice outside of the required timeframe. However, as the Tenant acknowledge that he withheld February 2022 rent and did not have a valid

reason under the *Act* for doing so, I do not find it necessary to even consider his request for more time to dispute the Notice.

As there was no evidence submitted to support that the Tenant had a valid reason, or any authority under the *Act*, for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the Landlord's claims for monetary compensation, based on the evidence before me, I grant the Landlord a monetary award in the amount of **\$3,000.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Section 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for February 2022	\$750.00
Rental arrears for March 2022	\$750.00
Rental arrears for April 2022	\$750.00
Rental arrears for May 2022	\$750.00
Filing fee	\$100.00
Total Monetary Award	\$3,100.00

Conclusion

Based on the above, the Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Furthermore, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$3,100.00** 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, 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: May 30, 2022

Residential Tenancy Branch