



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC, MNDCT / CNR, OLC, MNDCT, LRE

Introduction

This hearing dealt with the two separate applications from the tenant pursuant to the *Residential Tenancy Act* (the “Act”) as follows:

File No: 910066338 (filed March 2, 2022):

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

File No: 910069822 (filed April 7, 2022):

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The tenant was 10 minutes late calling into the hearing and left the hearing approximately 10 minutes before it concluded. Throughout the hearing, the tenant kept insisting he was moving out July 15, 2022, and did not care about any decision

rendered and did not want to participate in the hearing. The tenant repeatedly interrupted and was cautioned against doing so. The tenant stated he would appeal any decision that was issued. The landlord was not agreeable to the tenant's proposal to mutually end the tenancy July 15, 2022 and was seeking an immediate order of possession.

The tenant had filed three separate applications which further complicated the matter. The landlord acknowledged receipt of the tenant's initial application filed March 2, 2022, but not the second application filed April 7, 2022. The landlord acknowledged receipt of a third application filed May 6, 2022, which was not scheduled to be heard until September 2022. The tenant's third application was in regards to a subsequent 10 Day Notice issued in May 2022 as well as other remedies other the Act.

The tenant was asked to explain how and when he served the second application on the landlord; however, the tenant appeared to be confusing the matter of service of his second and third applications and kept getting sidetracked with other issues. For the sake of simplicity, even though I am not convinced that the landlord was ever served with the tenant's second application, I will not dismiss the tenant's application on this technicality as the result would be the same irrespective.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the applications to cancel the 10 Day Notice and One Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in both the tenant's applications with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice and/or One Month Notice be cancelled? If not, is the landlord entitled to an order of possession and an order for unpaid rent?

Background and Evidence

The tenancy began on January 1, 2022, with a monthly rent of \$1325.00 payable on the 1st day of each month. The tenant paid a security deposit of \$662.50 at the start of the tenancy.

The landlord testified that on April 5, 2022, she served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises as the tenant had failed to pay rent in the amount of \$1325.00 due on April 1, 2022.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding. The landlord testified that the tenant has also since failed to pay rent for May and June 2022.

The tenant's application to cancel the 10 Day Notice was filed on April 7, 2022, within the time period permitted under the Act. However, the tenant failed to participate in the hearing long enough to respond to the landlord's claims for unpaid rent. Further, the tenant has not submitted any evidence to reflect that rent was paid for April, May and June 2022.

Analysis

Section 26 of the Act requires that 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.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act. Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [landlord's notice:

non-payment of rent] an order requiring the payment of the unpaid rent must also be granted.

I accept the landlord's undisputed testimony and find the tenant failed to pay the outstanding rent as per the 10 Day Notice within 5 days of the Notice being served and that the tenant has failed to pay any rent since.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant failed to prove that rent was paid within 5 days after receiving the 10 Day Notice or that the tenant had a right under this Act to deduct all or a portion of the rent.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice passed quite some time ago, pursuant to section 68(2) of the Act, I find this tenancy ends effective the date of this decision.

The landlord is granted a monetary order in the amount of \$3,975.00 which includes unpaid rent for April, May and June 2022.

As the landlord has been issued an order of possession based upon the 10 Day Notice, I make no findings on the merits of the One Month Notice and this portion of the tenant's application is also dismissed without leave to reapply.

Conclusion

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.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$3975.00. 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: June 23, 2022

Residential Tenancy Branch