



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, RP, LRE, PSF, AAT, LAT, MNRT, RR, ERP

Introduction

The Tenant filed an Application for Dispute Resolution on February 25, 2022 seeking:

- a. the Landlord's compliance with the legislation and/or the tenancy agreement
- b. compensation for monetary loss
- c. repairs made to the unit after contacting the Landlord in writing
- d. suspension/set conditions on the Landlord's right to enter
- e. provision of services/facilities required by the agreement or law
- f. access for Tenant and/or their guests
- g. suspension/set conditions on the Landlord's right to enter
- h. repayment of the cost of emergency repairs they made during the tenancy
- i. reduction in rent for repairs not provided.

The Tenant amended their Application on March 8, 2022 to add their dispute of the 10-Day Notice to End Tenancy for Unpaid Rent.

The Tenant amended their Application on May 24, 2022 to add their plea for emergency repairs for health/safety reasons, after contacting the Landlord to do so.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 13, 2022.

Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* grant 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 an arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing 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 any of the notices to end tenancy issued by the Landlord.

I dismiss each of the Tenant’s other grounds for dispute resolution – items a. through i. above. The Tenant has leave to re-apply on these issues.

The Tenant’s application for emergency repairs is contingent upon the issue of a continuing tenancy.

Issues to be Decided

The Tenant provided a copy of the tenancy agreement they had with the Landlord here. The tenancy started on September 9, 2021 for a fixed-term period of 6 months. The rent amount was set at \$650 with no indication on which day of the month it is payable. The Tenant paid a security deposit of \$325.

In the hearing the Landlord specified that rent was payable on the 15th of each month, and repeated that the tenancy agreement was a fixed-term agreement, to end in March 2022.

The Landlord issued a 10-Day Notice to End Tenancy (the “10-Day Notice #1”) on March 2, 2022. This specified an end-of-tenancy date for March 13, 2022. On page 2, the Landlord indicated this was for the rent due on February 16, 2022, in the amount of \$1,300.

The Tenant provided that they found this 10-Day Notice on March 5, 2022 and amended their existing Application on March 8, 2022.

The Landlord issued a second 10-Day Notice, #2, on May 19, 2022. This set an end-of-tenancy date for May 30, 2022. On page 2, the Landlord specified the amount of \$3,250 that was due on May 15, 2022. This is the accumulation of rent, ongoing from the 10-Day Notice #1.

The Tenant presented they did pay on September 15, for the following month of October, and in each following month they would pay for the following calendar month. The Tenant confirmed they did not pay rent for February 2022, and thereafter each calendar month they did not pay, trying to confirm with the Landlord whether repairs would be complete. This continued for March, April, and May. In the hearing the Tenant (via their witness) questioned why they should pay rent “with this kind of accommodation”, referring to the state of the rental unit after the Landlord made changes within March.

The Landlord presented this was not correct and each month to be paid on the 15th was for a one-month timeframe, *i.e.*, December 15th – January 15th, and January 15th – February 15th, ongoing. This was because of the tenancy starting in mid-September.

Analysis

The *Act* s. 13 provides the requirements for any tenancy agreement. This includes, as per s. 13(2)(f)(v), the day in the month, or in the other period on which the tenancy is based, on which the rent is due.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

On my review of the tenancy agreement provided by the Tenant, the rent payment date is not present in the required spot in the tenancy agreement. However, I find the Tenant was aware of the 15th rent payable date because they shared their interpretation of what that meant: that a payment on the 15th of one month was the following month’s full rent payment. The Landlord confirmed this was *not* correct. Additionally, they Tenant stated they paid initially on September 15th, and then a couple of months after that.

Despite this misunderstanding, the Tenant confirmed that they were not paying rent. This began with no payment of rent for February. Part of the Tenant's reason for not paying rent going forward was the Landlord not completing repairs within the rental unit within the 3-month timeframe, as stated by the Landlord at the start of the tenancy.

At all times, the Tenant was obligated to pay rent. This is set both in the tenancy agreement and, more importantly, the *Act* s. 26. The state of the rental unit, or the Landlord not repairing the rental unit as requested to do so does not override this obligation. The Tenant here did *not* have the right to withhold rent.

The Tenant confirmed they did not pay rent in the hearing. Because of non-payment of rent by the Tenant, I find this justified the Landlord issuing the 10-Day Notice, initially on March 2, and then again on May 19, 2022.

For this reason, I dismiss the Tenant's Application to cancel the 10-Day Notice. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the Landlord served the 10-Day Notice #1 with complete details on March 2, 2022, and another on May 19, 2022. I find each 10-Day Notice complies with the requirements for form and content with each detail. These are, as in s. 52, the signature and date of the landlord, the address of the rental unit, the effective date of the notice (i.e., the move-out date), and the grounds for ending the tenancy. From the copy of each 10-Day Notice in the evidence, I find they were in the approved form as specified in the *Act*. The Landlord is entitled to an Order of Possession for the effective date indicated.

The *Act* s. 55(1.1) specifies that I must grant an order requiring the payment of unpaid rent. In line with this, I grant the Landlord a Monetary Order for the amount of \$3,250, which is the amount owing as of the date of the hearing on June 13, 2022. The Tenant must make a separate application for compensation if they feel they are owed a rent reduction or other compensation stemming from this tenancy.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for a cancellation of each of the 10-Day Notice #1 and the 10-Day Notice #2, without leave to reapply.

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

I order the Tenant to pay the Landlord the amount of \$3,250, pursuant to s. 55(1.1) 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: June 13, 2022

Residential Tenancy Branch