



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR, OLC, MNDCT, RP, RR, LRE, PSF, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2022 (the "10 Day Notice") pursuant to section 46;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of \$100,000.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- an order to allow the Tenant to reduce rent by \$800.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70;
- an order that the Landlord provide services or facilities required by law pursuant to section 65; and
- authorization to recover the Tenant's filing fee for this application from the Landlord pursuant to section 72.

The Landlord made a cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to sections 46 and 55;
- a Monetary Order of \$2,400.00 for unpaid rent pursuant to sections 26 and 67; and
- authorization to recover the Landlord's filing fee for this application from the Tenant pursuant to section 72.

The Tenant, the Landlord's grandson IB, and the Landlord's advocate GC attended the hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

IB and GC acknowledged the Landlord's receipt of the Tenant's notice of dispute resolution proceeding package and initial documentary evidence (collectively, the "Tenant's NDRP Package"). I find the Landlord has been served with the Tenant's NDRP Package in accordance with sections 88 and 89 of the Act.

IB and GC testified the Tenant sent additional documentary evidence and digital evidence in a USB between May 12, 2022 and May 19, 2022. IB and GC testified they have not had a chance to fully review this evidence.

Rule 3.14 of the Rules of Procedure requires any documentary or digital evidence that is intended to be relied on at the hearing to be received by the respondent not less than 14 days before the hearing. In this case, the Tenant's deadline for serving documentary evidence on the Landlord was May 9, 2022. Accordingly, I exclude from consideration in this hearing, the portion of the Tenant's documentary and digital evidence that was not received by the Landlord on or before May 9, 2022.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package for the Landlord's cross-application, together with the Landlord's documentary evidence (collectively, the "Landlord's NDRP Package"). I find the Tenant has been served with the Landlord's NDRP Package in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Severing of Unrelated Claims

In the Tenant's application, the Tenant has made eight different claims for relief.

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

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.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, 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.

(emphasis added)

In this case, I find the most important claim in the Tenant's application is the claim to cancel the 10 Day Notice. I find that all of the Tenant's other claims, aside from the claim for recovery of the filing fee, to be unrelated to the Tenant's claim to cancel the 10 Day Notice.

Accordingly, I dismiss all of the Tenant's claims, other than the claims to cancel the 10 Day Notice and to recover the filing fee, with leave to re-apply.

I note that the portion of the Tenant's evidence which I had excluded from this hearing for being served late, may be submitted and served in accordance with the Rules of Procedure for a potential future application that deals with the balance of the Tenant's claims.

I take this opportunity to further remind the Tenant that she will need to revise her monetary claim in order for the Residential Tenancy Branch to be able to adjudicate this issue in a future application. Rule 2.8 of the Rules of Procedures states:

2.8 Maximum amount of monetary claim

An applicant who has a claim amounting to more than \$35,000.00 may abandon the part of the claim that exceeds \$35,000 so that the balance of the claim may be heard by the arbitrator.

Preliminary Matter – Amendment of Landlord's Application

GC testified that since the filing of the Landlord's application, the amount of rent owing by the Tenant has increased from \$2,400.00 to \$3,600.00. GC confirmed that this total amount represents unpaid rent owed between February and May 2022.

Rule 4.2 of the Rules of Procedure 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 Tenant could reasonably have anticipated a request for an amendment to claim additional outstanding rent as of the date of the hearing, I amended the Landlord's application to include a monetary claim of \$3,600.00 for unpaid rent.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Tenant entitled to recovery of the Tenant's filing fee from the Landlord?
3. Is the Landlord entitled to an Order of Possession?
4. Is the Landlord entitled to a Monetary Order for unpaid rent?
5. Is the Landlord entitled to recovery of the Landlord's filing fee from the Tenant?

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 arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The parties agreed as to the following particulars of the tenancy:

- The tenancy is verbal, month-to-month, and commenced on December 1, 2019.
- Rent is \$1,200.00 due on the first day of each month.

- The Tenant paid a security deposit of \$600.00, which is held by the Landlord.
- The rental unit is a basement suite. The Landlord lives on the upper floor.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is dated March 3, 2022 and has an effective date of March 14, 2022. The 10 Day Notice states that the Tenant has failed to pay rent due on February 1, 2022 and March 1, 2022. GC confirmed a copy of the 10 Day Notice was given in person to the Tenant on March 3, 2022.

GC testified that the Tenant did not pay rent when due from February to May 2022. GC testified that the Landlord issued two further 10 day notices to end tenancy for unpaid rent, which were sent to the Tenant via registered mail on April 3, 2022 and May 4, 2022. Copies of these notices are included in the Landlord's evidence. GC testified the Landlord received a \$1,200.00 draft from the Tenant on April 21, 2022.

The Landlord submitted "rent receipts" showing payments that the Landlord received from the Tenant since the beginning of the tenancy. It is not disputed that the Landlord prepared these receipts for the purpose of this hearing.

The Landlord's receipts show that starting in July 2021, the Tenant began paying rent late and closer to the end of the month. Prior to July 2021, the Landlord's receipts indicate the Tenant had mostly paid rent on the first of each month, up to several days late, or occasionally in advance. The Landlord's receipts indicate that since November 2021, the Tenant paid rent as follows:

- \$1,200.00 for November 2021 rent received on November 20, 2021
- \$1,200.00 for December 2021 rent received on December 21, 2021
- \$1,200.00 for January 2022 rent received on January 26, 2022

The Tenant testified that the Landlord collected rent in cash without issuing receipts during the tenancy. The Tenant stated that the Landlord "backdated" the rent receipts. The Tenant also stated that "rent was never late".

The Tenant submitted copies of her bank statements from November 2021 to February 2022, with portions heavily redacted, which appear to show the following ATM cash withdrawals:

- \$1,300.00 on November 17, 2021
- \$1,500.00 on December 15, 2021
- \$1,500.00 on January 20, 2022

- \$1,300.00 on February 16, 2022

The Tenant testified these withdrawals were used to pay rent in advance for the next month. I note that these amounts do not correspond to the monthly rent, which is \$1,200.00. I further note that by the Tenant's own admission, these withdrawal dates do not necessarily correspond to the date on which the Tenant said she paid rent to the Landlord.

The Tenant indicated that rent for December 2021 was paid on November 17, 2021. The Tenant did not indicate the date on which January 2022 rent was paid.

The Tenant testified she paid February rent to the Landlord's wife on January 26, 2022. The Tenant stated that most of the time it was the Landlord's wife who received the rent.

During the hearing, the Tenant testified she paid March 2022 rent in cash to the Landlord's wife on March 4, 2022, although a note on the Tenant's bank statement appears to indicate that it was paid on March 3, 2022. During the hearing, GC and IB denied that the Landlord received this payment.

The Tenant testified for April and May 2022 rent, she purchased two drafts and sent them to the Landlord by registered mail in two separate packages. The Tenant submitted copies of the drafts and the registered mail receipts into evidence. The drafts are each in the amount of \$1,200.00 and are dated April 14, 2022 and April 27, 2022 respectively. The registered mail receipts indicate that the packages were sent on April 14, 2022 and April 28, 2022. The tracking numbers are referenced on the cover page of this decision.

Tracking records for the first registered mail package show the package as "delivered" on April 21, 2022, after a notice card had been left on April 19, 2022. The records do not include a name or signature. During the hearing, GC and IB confirmed the Landlord received a \$1,200.00 draft from the Tenant on April 21, 2022.

Tracking records for the second registered mail package show that it was delivered on May 3, 2022. The delivery confirmation indicates what appears to be the Landlord's name, slightly misspelled, and a signature. During the hearing, GC and IB testified the Landlord did not receive the \$1,200.00 draft that the Tenant stated she had sent in this second registered mail package.

The Tenant argued that the Landlord is trying to avoid his responsibility for fixing issues relating to the rental unit. The Tenant repeated that “it does not make sense” for her to not pay the rent or to pay rent late. The Tenant stated she “does not have any balance left to pay [the Landlord] any rent”.

The Tenant testified she tried to talk to the Landlord about the issues with the rental unit on March 2, 2022. The Tenant testified she wanted the Landlord to fix the problems with the broken sink and rats in the rental unit. The Tenant stated that if the Landlord was not going to fix these issues, she was not going to pay the rent. The Tenant stated it has been more than a year since she noticed the rat problem.

The Tenant submitted written statements describing the stress caused by her housing situation.

GC testified he attended at the rental unit for an inspection on April 9, 2022, in response to the Tenant’s concerns about rats. GC stated he went through the entire home during the inspection and did not see any rodent droppings or signs of damage caused by rodents. GC testified that the couch had a 5-inch rip along the seamline and a square hole, which do not appear to be caused by rats. GC submitted that the Landlord, who lives upstairs, never had problems with rodents. The Landlord submitted photographs of the rental unit taken during the inspection into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Is the Tenant entitled to cancellation of the 10 Day Notice?

Section 26(1) of the Act states that 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 tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy for unpaid rent must comply with section 52 of the Act in order to be effective. Section 52 states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Based on the parties' evidence, I find the Tenant was served in person with a copy of the 10 Day Notice on March 3, 2022, in accordance with section 88(a) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until March 8, 2022 to dispute the 10 Day Notice. In this case, the Tenant and the Landlord had a verbal discussion which led the Tenant to make her application on March 2, 2022, one day before she actually received the 10 Day Notice. Notwithstanding this irregularity, I find the Tenant has made her application to dispute the 10 Day Notice within the 5-day dispute deadline stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the Landlord submits that he is owed \$3,600.00 in rent from February 2022 to May 2022. The Tenant's position is that she does not owe any rent. The Tenant's evidence is that she paid February rent (cash) on January 26, 2022, March rent (cash) on March 4, 2022, April rent (draft) on April 21, 2022 and May rent (draft) on May 3, 2022.

Upon reviewing the sum of the evidence and the parties' testimony, I find the Landlord's evidence to be generally more credible than that of the Tenant's. First, the Tenant claimed that rent was "never late". However, by the Tenant's own account, she did not pay rent for March, April and May 2022 on or before the due date. Second, I find the Landlord has provided a more complete and precise record of payments received from the Tenant. In contrast, the Tenant's record is much more limited. The cash withdrawal entries shown on the Tenant's heavily redacted bank statements generally do not correspond to the amount of rent paid or the dates on which rent is said to have been paid.

I now consider the issue of whether the Tenant paid February rent. GC and IB testified that the payment received on January 26, 2022 was for January rent. I find the Tenant's testimony—namely that she usually pays rent a week or two in advance, such that February rent was paid on January 26, 2022—to be less credible. To accept the Tenant's version of events, there would also be an extra payment that was not accounted for in the Landlord's records, for which the dates and amounts paid were undisputed. Accordingly, I accept the Landlord's evidence and find that the \$1,200.00 payment received on January 26, 2022 was for rent due on January 1, 2022. Thus, I conclude that the Tenant did not pay February rent.

For reasons explained below, I find on a balance of probabilities that the Tenant did not pay March rent to the Landlord either. During the hearing, GC and IB testified that March rent was not received. The Tenant testified she paid the rent to the Landlord's wife on March 4, 2022. However, on the Tenant's submitted bank statement, the Tenant writes that the rent was paid on March 3, 2022, using cash withdrawn on February 16, 2022. I find the Tenant's evidence on this issue to be inconsistent. The Tenant had also stated that if the Landlord was not going to fix the issues with the rental unit, she was not going to pay the rent. Therefore, I do not find the Tenant's claim that she paid March rent to be credible.

In sum, I find the Landlord has established, on a balance of probabilities, the grounds on which the 10 Day Notice was issued, namely, that the Tenant did not pay rent due on February 1, 2022 and March 1, 2022. I further find there was insufficient evidence to suggest that the Tenant had a right under the Act to withhold payment of rent.

Accordingly, I conclude that the Tenant is not entitled to cancel the 10 Day Notice.

2. Is the Tenant entitled to recovery of the Tenant's filing fee?

The Tenant has not been successful in her application. Pursuant to section 72(1) of the Act, I dismiss the Tenant's claim for reimbursement of her filing fee.

3. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

4. Is the Landlord entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to

order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

In this case, the Tenant has applied to dispute the 10 Day Notice and the conclusive presumption does not apply. The Tenant has not vacated the rental unit as of the date of the hearing.

Pursuant to section 68(2) of the Act, I order that for the purposes of calculating unpaid rent under section 55(1.1), the parties' tenancy is ended effective the date of the dispute resolution hearing, or May 24, 2022, rather than the effective date stated on the 10 Day Notice.

The Landlord submits that since the issuance of the 10 Day Notice, the Tenant owes additional rent in the amount of \$1,200.00. The Landlord acknowledges having received a \$1,200.00 draft from the Tenant on April 21, 2022, but disputes having received the second \$1,200.00 draft. I note that it is unusual for the Tenant to send the draft to the Landlord by registered mail, since the Landlord lives above the rental unit. In any event, the registered mail delivery confirmation obtained using the tracking number provided by the Tenant shows what appears to be the Landlord's name and a signature confirming delivery occurred on May 3, 2022. Based on this evidence, I find on a balance of probabilities that the Landlord received the second draft of \$1,200.00 on May 3, 2022. Accordingly, I decline to award the Landlord additional rent owing in the amount of \$1,200.00. I find that the total amount of rent owing by the Tenant from February to May 2022 is \$2,400.00.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As I have found the Tenant to be in breach of section 26 of the Act and the parties' tenancy agreement for non-payment of rent, I find that the Landlord would also be entitled to compensation for the amount sought in the Landlord's application by virtue of section 67 of the Act.

Pursuant to sections 55(1.1) and 67 of the Act, I award the Landlord \$2,400.00 for unpaid rent owing by the Tenant.

5. Is the Landlord entitled to recovery of the Landlord's filing fee?

As the Landlord has been successful in his application, I grant the Landlord's claim for recovery of the \$100.00 filing fee from the Tenant under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$600.00 security deposit held by the Landlord in partial satisfaction of the total sum awarded in this hearing.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
February 2022 Rent	\$1,200.00
March 2022 Rent	\$1,200.00
Landlord's Filing Fee	\$100.00
Less Security Deposit	- \$600.00
Total Monetary Order for Landlord	\$1,900.00

Conclusion

The Landlord is successful in his cross-application. The tenancy is ending.

The Tenant's claims to dispute the 10 Day Notice and to recover the filing fee are dismissed without leave to re-apply.

The balance of the Tenant's application is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenant's \$600.00 security deposit in partial satisfaction of the total sum awarded in this application.

Pursuant to sections 55(1.1) and 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,900.00. 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: June 21, 2022

Residential Tenancy Branch