



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order under s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 17, 2022 (the “10-Day Notice”);
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- A monetary order pursuant to s. 67 for compensation due to loss or other money owed; and
- An order under s. 70 restricting the Landlord’s access to the rental unit.

T.S. attended as the Landlord. The Tenant did not attend, nor did someone do so on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that he personally served the 10-Day Notice on the Tenant on March 18, 2022. I find that the 10-Day Notice was served on the Tenant in accordance with s. 88 of the *Act* and was received by the Tenant on March 18, 2022.

Rule 3.5 of the Rules of Procedure requires applicants to demonstrate service of their application on the named respondents. Though the Tenant did not attend, the Landlord confirmed receiving the Tenant's application and raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant's application as acknowledged at the hearing.

The Landlord advised that he personally served his responding evidence on the Tenant in early April 2022. I find that the Landlord served his response evidence in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenants' Claims

The Tenant seeks various relief in their application. Rule 6.6 of the Rules of Procedure sets out the general expectation that applicants bear the burden of proving their claims. However, when a notice to end tenancy is issued and a tenant files to dispute the notice, the onus of proving the notice was properly issued rests with the respondent landlord.

In this instance, the Tenant was not present to advance their claims under ss. 62 (order that the Landlord comply), 67 (monetary award), and 70 (Restricting the Landlord's Access) of the *Act*. As the applicant Tenant did not attend, I find that she failed to prove her claims under ss. 62, 67, and 70. These claims are hereby dismissed without leave to reapply.

Given that Landlord holds the evidentiary burden under the claim under s. 46, the hearing proceeded with that claim.

Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) Is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision. The Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 15, 2021.
- Rent of \$2,700.00 was due on the first day of each month.
- The Landlord a security deposit of \$1,350.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord advised that the 10-Day Notice was issued as the Tenant began to fall behind in paying rent in February 2022. The Landlord advised that Tenant was in arrears of rent for February 2022 in the amount of \$200.00, such that total rent due on March 1, 2022 was \$2,900.00. The Landlord further advised that the Tenant paid \$1,900.00 sometime in March 2022 and made no payments since that time. The Landlord provides a copy of text message sent by the Tenant on March 1, 2022 confirming that they were total arrears of \$1,000.00 for rent for the months of March and February 2022.

The Landlord testified that the Tenant vacated the rental unit on May 25, 2022.

According to the Landlord, he indicates that he offered a settlement to the Tenant such that he would not pursue a claim for unpaid rent if the Tenant was to vacate the rental unit by the end of May 2022. The Landlord says that he prepared a written agreement with respect to this settlement offer. The Landlord did not provide a copy of the settlement, though indicates that there were other aspects to the settlement offer.

The Tenant is said to have assured the Landlord that they would vacate the rental unit but refused to sign the written settlement offer put together by the Landlord. The Landlord seeks the full amount for unpaid rent as he says there was no agreement signed waiving his right to claim for unpaid rent.

Analysis

The Tenant applied to cancel the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, and sets out the grounds for ending the tenancy. The Landlord used a previous version of the Residential Tenancy Branch's form RTB-30. Though the approved form has been updated, I do not find that this distinction is relevant as the old form and the new form contain the same relevant information. The use of the old form does not invalidate the 10-Day Notice under s. 52.

Presently, the Tenant has vacated the rental unit, thus making the claim to cancel the 10-Day Notice moot. As the tenancy is over, I dismiss the Tenant's claim to cancel the 10-Day Notice without leave to reapply. Correspondingly, the Landlord's right to an order of possession under s. 55(1) of the *Act* is no longer relevant since he has taken possession of the rental unit.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. If a tenant abandons or vacates the rental unit prior to the hearing, then the tenancy ends when it is vacated or abandoned. Rent owing up to this date would constitute unpaid rent.

In the present circumstances, the Landlord says he offered that he would not pursue an amount for unpaid rent if the Tenant agreed to vacate the rental unit by the end of May 2022 but that the Tenant refused to sign the written agreement respecting the settlement.

The settlement offer described by the Landlord at the hearing raises the potential application of estoppel. Estoppel is summarized in *Vision West Development Ltd. v. McIvor Properties Ltd.*, 2012 BCSC 302 at para 62 as follows:

[62] A convenient statement of the doctrine of estoppel is found in *Canadian Encyclopedic Digest*, 4th ed. vol. 25 (Toronto: Thompson Reuters, 2009) at 87, para. 9:

When one party has, by words or conduct, made to the other a representation that was intended to affect the legal relations between them and be acted on accordingly, then, once the other party has taken him or her at word and acted on it to his or her detriment, the party who made the representation may not revert to the previous legal relations as if no such representation had been made, but must accept the legal relations subject to the qualification that he or she has introduced, despite the absence of consideration. The party to whom the representation was made cannot be said to rely on the statement if knowing it to be false; he or she must reasonably believe it to be true. Furthermore, the statement must be clear and unqualified and the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the action.

Essentially, a party to a settlement is said to be estopped from advancing a claim that they specifically waived in the agreement.

In the present circumstances, I do not have a copy of the draft settlement agreement, though I accept the Landlord's undisputed testimony that it comprised of more than just a waiver of claims for unpaid rent provided the Tenant agreed to move out of the rental unit by the end of May 2022. This point is critical because though the Tenant could be said to have acted on the offer to move out of the rental unit by the end of May 2022, the complete settlement offer raised by the Landlord was not a strict waiver and contained other elements. I accept that the Tenant refused to sign the settlement offer put forward by the Landlord. The Tenant cannot unilaterally accept portions of the settlement offer through their conduct while disregarding other aspects of it. It was either accepted in its entirety or not.

As the Tenant did not sign the offer, I find that the Tenant did not accept the Landlord's settlement offer, such that there is no agreement that would prevent the Landlord from seeking an order for unpaid rent. The doctrine of estoppel does not prevent the application of s. 55(1.1) under the present circumstances.

The Landlord provides undisputed testimony that the Tenant paid rent as follows:

Month	Rent Due	Rent Paid	Difference
February 2022	\$2,700.00	\$2,500.00	-\$200.00
March 2022	\$2,700.00	\$1,900.00	-\$800.00
April 2022	\$2,700.00	\$0.00	-\$2,700.00
May 2022	\$2,700.00	\$0.00	-\$2,700.00
Total Owed			\$6,400.00

This amount is partially corroborated by the Tenant in the text message provided by the Landlord from March 1, 2022.

I find that the Tenant failed to pay rent in the amount of \$6,400.00. As the Tenant's claim to cancel the 10-Day Notice was dismissed and the 10-Day Notice complies with s. 52, I order under s. 55(1.1) of the *Act* that the Tenant pay \$6,400.00 to the Landlord in unpaid rent.

Conclusion

The Tenant failed to prove their claims under ss. 62, 67, and 70 of the *Act*. These aspects of their claim are dismissed without leave to reapply.

The Tenant vacated the rental unit on May 25, 2022. As the tenancy is over, I dismiss the Tenant's claim to cancel the 10-Day Notice without leave to reapply.

The Landlord is entitled to an order for unpaid rent under s. 55(1.1) of the *Act* and has established unpaid rent in the amount of \$6,400. Pursuant to ss. 55 and 67 of the *Act*, I order that the Tenant pay **\$6,400.00** to the Landlord in unpaid rent.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: July 12, 2022

Residential Tenancy Branch