



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310066231: CNR, RP, LRE
File #210066610: OPR-DR, MNR-DR, FFL

Introduction

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

- An order pursuant to s. 46 to cancel a 10-Day Notice to End Tenancy signed on March 5, 2022 (the “10-Day Notice”);
- An order for repairs to the rental unit pursuant to s. 32; and
- An order restricting the Landlord’s right of access under s. 70.

The Landlord files a cross-application seeking the following relief under the *Act*:

- An order for possession under s. 55 after issuing the 10-Day Notice.
- An order for unpaid rent pursuant to s. 67; and
- Return of its filing fee pursuant to s. 72.

The Landlord’s application was served originally as a direct request application but was scheduled to a participatory hearing due to the Tenant’s application to cancel the 10-Day Notice.

L.B. and F.M. appeared as managers and agents for the Landlord. D.J. appeared as owner and agent for the Landlord.

The Tenant did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notices 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 parties 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 parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

L.B. advised that he posted the 10-Day Notice to the Tenant's door on March 5, 2022. The Landlord provides a copy of a proof of service form with respect to the service of the 10-Day Notice. I find that the 10-Day Notice was served on the Tenant in accordance with s. 88 of the *Act* by having it posted to his door on March 5, 2022. Pursuant to s. 90, I deem that the Tenant received the 10-Day Notice on March 8, 2022.

F.M. advises that the Notice of Dispute Resolution was served on the Tenant by way of registered mail sent on March 24, 2022. F.M. advised that this registered mail package was returned to the Landlord. F.M. further advised that the Landlord posted the Notice of Dispute Resolution and the Landlord's evidence to the Tenant's door on June 7, 2022, sent that package via registered mail on June 8, 2022, and sent an email copy to the Tenant on June 16, 2022.

I find that the Landlord served the Tenant with the Notice of Dispute Resolution in accordance with s. 89 of the *Act* by both sending it via registered mail on March 24, 2022 and by posting it to the Tenant's door on June 7, 2022. I note that Policy Guideline #12 is clear that failing to pick-up documents sent via registered mail does not affect the deeming provisions of the *Act*. Accordingly, I deem that the Tenant received the Notice of Dispute Resolution on March 29, 2022. I further find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Notice of Dispute Resolution by the additional steps taken by the Landlord to ensure the Tenant had notice of its application.

I find that the Landlord's evidence was served in accordance with s. 89(2) of the *Act* by having it posted to the Tenant's door on June 7, 2022 and in accordance with s. 89(1) of the *Act* by having it sent via registered mail on June 8, 2022. Pursuant to s. 90, I find that the Landlord's evidence was received by the Tenant on June 10, 2022.

The Landlord acknowledges receipt of the Tenant's application.

Preliminary Issue – Tenant's Application

The Tenant claims relief under ss. 46, 32, and 70. The evidentiary burden of proving the 10-Day Notice was issued in compliance with the *Act* rests with the Landlord, a point

made clear by Rule 6.6 of the Rules of Procedure. The burden of proving the Tenant's claims under s. 32 (repairs) and 70 (restricting the Landlord's right of entry) rests with the Tenant as the applicant.

As the Tenant did not attend and submit evidence on his behalf, I find that he has failed to prove his claims under s. 32 and 70. These two claims are dismissed without leave to reapply.

Given that the evidentiary burden of the Tenant's claim under s. 46 rests with the Landlord and that it is complimentary to the Landlord's application, I have not dismissed this portion of the Tenant's claim.

Preliminary Issue – Landlord's Monetary Claim

The Landlord filed an amendment on June 7, 2022 to increase the amount claimed for unpaid rent. F.M. advised that the amendment was served on the Tenant on June 7, 2022 by posting it to the Tenant's door, June 8, 2022 by way of registered mail, and a copy sent via email on June 14, 2022. I find that the amendment was served in accordance with s. 89 of the *Act* and deem that the amendment was received by the Tenant on June 10, 2022. I find that the June 7, 2022 amendment complies with the Rules of Procedure and was served on the Tenant.

The Landlord also seeks unpaid rent for July 1, 2022. Rule 4.2 of the Rules of Procedure permits amendments 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". This is precisely what has occurred here. Pursuant to Rule 4.2 of the Rules of Procedure, I permit the Landlord's amendment at the hearing to include the additional claim for unpaid rent for July 1, 2022.

Preliminary Issue – Style of Cause

The Landlord, which is a corporate entity, was named differently by the parties in their respective applications. At the outset of the hearing, I canvassed this issue with the Landlord's agents. I was advised that the legal name for the Landlord is correctly listed by the Landlord in its application. The Tenant was not present to provide submissions on this point.

I accept the undisputed testimony of the Landlord's agents that the correct spelling for the Landlord's name is listed in its application. I find that it is appropriate and reasonable to correct the style of cause of the Tenant's application such that the parties have consistent naming across both applications. Accordingly, I amend the Tenant's application to correct the spelling such that the Landlord is named as it is in the Landlord's application.

Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) Is the Landlord entitled to an order for possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is the Landlord entitled to return of its 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's agents confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit in mid-December 2021. The tenancy agreement was signed and commenced on January 1, 2022.
- Rent of \$1,400.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$700.00 in trust for the Tenant.

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

F.M. advised that the 10-Day Notice was issued as the Tenant had failed to pay \$100.00 of his rent for February 2022 and failed to rent for March 2022 at all. A copy of the 10-Day Notice was put into evidence by the Landlord. F.M. further advised that the Tenant failed to pay rent on April 1, 2022, May 1, 2022, June 1, 2022, and July 1, 2022. In total, F.M. says the Landlord claims \$7,200.00.

The Landlord's agents confirmed that the Tenant continues to reside within the rental unit.

Analysis

The Tenant applies to cancel the 10-Day Notice and the Landlord seeks and order for possession and order for unpaid rent.

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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant did file to dispute the 10-Day Notice. The Landlord indicates that no rent was paid since it was issued. In consideration of Rule 2.6 of the Rules of Procedure and upon review of the file, I find that the Tenant filed his application on March 16, 2022. As noted above, the Tenant was deemed to have received the 10-Day Notice on March 8, 2022. Accordingly, I find that the Tenant failed to dispute the 10-Day Notice within the 5-days permitted to him under s. 46(4) of the *Act*. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is March 19, 2022, the date stated in the 10-Day Notice.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order for possession. The Tenant's application to cancel the 10-Day Notice is dismissed and the Landlord is granted an order for possession under s. 55.

The Landlord also seeks an order for unpaid rent under s. 67 of the *Act*. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, 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 *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, rent was not paid in accordance with the Tenancy Agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

Based on the undisputed testimony of the Landlord's agents, I find that the Tenant failed to pay rent as follows:

| Month | Rent Due | Rent Paid | Difference |
|------------------|------------|------------|-------------------|
| February 1, 2022 | \$1,400.00 | \$1,300.00 | -\$100.00 |
| March 1, 2022 | \$1,400.00 | \$0.00 | -\$1,400.00 |
| April 1, 2022 | \$1,400.00 | \$0.00 | -\$1,400.00 |
| May 1, 2022 | \$1,400.00 | \$0.00 | -\$1,400.00 |
| June 1, 2022 | \$1,400.00 | \$0.00 | -\$1,400.00 |
| July 1, 2022 | \$1,400.00 | \$0.00 | -\$1,400.00 |
| TOTAL | | | \$7,100.00 |

The Landlord could not have mitigated their damages under the circumstances as the Tenant continued to reside within the rental unit. Accordingly, I find that the Landlord has established a monetary claim for unpaid rent in the amount of \$7,100.00.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit of \$700.00 in partial satisfaction of the total arrears owed by the Tenant.

As a final note, even had the Tenant filed in time and the conclusive presumption not applied, I still would have found in favour of the Landlord. I am satisfied based on the undisputed evidence that the 10-Day Notice was in the proper form and that the Tenant failed to pay rent.

Conclusion

The Tenant failed to attend the hearing to prove his claims under ss. 32 and 70 of the *Act*. They are dismissed without leave to reapply.

The 10-Day Notice was properly issued and the Tenant failed to dispute it within time. The conclusive presumption under s. 46(5) of the *Act* applies. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order for possession. Pursuant to s. 55 of the *Act*, I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

The Landlord has established its claim for unpaid rent in the amount of \$7,100.00.

As the Landlord was successful in its application, I find that it is entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, the Tenant shall pay the Landlord's \$100.00 filing fee.

I make a total monetary order taking the following into account:

| Item | Amount |
|---|-------------------|
| Unpaid rent | \$7,100.00 |
| Landlord's filing fee pursuant to s. 72(1) | \$100.00 |
| Less the security deposit to be retained by the Landlord pursuant to s. 72(2) | -\$700.00 |
| TOTAL | \$6,500.00 |

Pursuant to ss. 67 and 72, I order that the Tenant pay **\$6,500.00** to the Landlord.

It is the Landlord's obligation to serve the order for possession and 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.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 04, 2022

Residential Tenancy Branch