



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: **CNR, OLC**
CNC, LRE

Introduction

This hearing dealt with the Tenant's applications pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, and Legal Counsel attended the hearing at the appointed date and time. The Tenant came into the call late. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice via Canada Post registered mail on March 7, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the

cover sheet of this decision. The Tenant reported on his Notice of Dispute Resolution Proceeding that he received the One Month Notice by registered mail. I find that the One Month Notice was deemed served on the Tenant on March 12, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord served the Tenant with the 10 Day Notice on March 14, 2022 by posting the notice on the Tenant's door. The Landlord uploaded a Proof of Service form #RTB-34 attesting to service of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on March 17, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord acknowledges personal service of the Notice of Dispute Resolution Proceeding package by the Tenant on March 24, 2022 (the "NoDRP package"). I find that the Landlord was served with the NoDRP package on March 24, 2022 in accordance with Section 89(1)(a) of the Act.

The Landlord served the Tenant with their evidence on June 22, 2022 by posting the evidence package on the Tenant's door. The Tenant confirms receipt of the Landlord's evidence package. I find the Landlord's evidence package was deemed served on the Tenant on June 25, 2022 according to Sections 88(g) and 90(c) of the Act.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord's request to amend their original application from \$960.00 to \$4,800.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

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

2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
4. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
5. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
6. Is the Tenant entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this periodic tenancy began on April 15, 2014. Monthly rent is \$960.00 payable on the first day of each month. A security deposit of \$457.50 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was April 30, 2022.

The Landlord provided further details of the cause to end this tenancy as:

Despite multiple warnings, the tenant is consistently and repeatedly late in paying rent which is due on the first of every month. These repeated breaches of the lease agreement are causing the landlord unreasonably enforcement costs and wasted time in having to regularly demand payment by the tenant. The landlord has previously served the tenant with multiple 10 day notices to end tenancy but has allowed the tenant to stay after he paid late. However, the landlord's business can no longer sustain these late payments and enforcement costs and requires the tenant to vacate the premises. The landlord has documentary evidence of the repeated late payments by the tenant.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$960.00 in outstanding rent on March 1, 2022. The effective date of the 10 Day Notice was March 28, 2022.

The Landlord testified that they have not received rental payments for March, April, May, June, and July 2022. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$4,800.00.

The Tenant states he was going to borrow money from his father, but after the Landlord spoke to his father, his father now refuses to assist the Tenant in paying his outstanding rent. The Tenant said he does not have an Order from an Arbitrator to withhold rent from the Landlord. The Tenant said he is trying to get out of this tenancy.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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 outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) *pay the overdue rent, in which case the notice has no effect, or*
 - (b) *dispute the notice by making an application for dispute resolution.*

...

The Landlord's 10 Day Notice was deemed served on the Tenant on March 17, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on March 18, 2022 which was within five days after receiving the 10 Day Notice.

The Tenant stated that he does not have an Order from an Arbitrator allowing him to withhold rent from the Landlord. I find the Tenant has not paid rent since March 2022 and is deeply in arrears. Accordingly, I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

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.*

(1.1) *If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

I previously found that the Landlord's 10 Day Notice complied with Section 52 of the Act. I uphold the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$4,800.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to

Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$4,800.00
Less security deposit:	-\$457.50
TOTAL OWING:	\$4,342.50

As the tenancy has ended, I dismiss the Tenant's claim to cancel the Landlord's One Month Notice; I dismiss the Tenant's claim for an Order for the Landlord to comply with the Act, regulations, or tenancy; and, I dismiss the Tenant's claim for an Order to suspend or set conditions on the Landlord's right to enter the rental unit.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$4,342.50. 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 of British Columbia and enforced as an Order of that Court.

The Tenant's applications are both dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 12, 2022

Residential Tenancy Branch