



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE SOURCE ENTERPRISES LTD. (MAIN STREET HOSTEL) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: MNRL, OPR, FFL
For the tenant: CNR, MNDCT, RR, LRE

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent dated February 02, 2022 (the February Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 08, 2022 (the June Notice), pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to restrict or suspend the landlord's right of entry, under section 70.

Landlord LS and tenant QC (the tenant) attended the hearing. LS represents "The Source Enterprises Ltd (Main Street Hostel)", hereinafter "Main Street Hostel". All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

The landlord’s application lists applicant Main Street Hostel and respondent the tenant. The tenant’s application lists applicant the tenant and respondent LS.

Preliminary Issue – Service of the Main Street Hostel’s application

LS is not sure if she served the notice of hearing.

The tenant affirmed she did not receive the notice of hearing and that she is not aware of the Main Street Hostel’s application.

Based on the vague testimony offered by LS, I find that Main Street Hostel did not serve the notice of hearing.

The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

Based on the foregoing, I dismiss Main Street Hostel’s application with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

Main Street Hostel must bear the cost of the filing fee, as Main Street Hostel was not successful.

Preliminary Issue – Service of the tenant’s application

LS confirmed receipt of the tenant’s notice of hearing and evidence (the materials) and that she had enough time to review the materials.

The tenant confirmed receipt of LS’ response evidence and that she had enough time to review it.

Based on the testimonies of both parties, I find that each party was served with the respective materials in accordance with section 89(1) of the Act.

I note that sections 55(1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order

of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue – Correction of the Tenant's Name

At the outset of the hearing the tenant corrected the spelling of her first name.

Pursuant to section 64(3)(a) of the Act, I have amended the applications.

Preliminary Issue – Unrelated claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the June Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the June Notice which will be decided upon.

Issues to be Decided

Is the tenant entitled to cancellation of the June Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession and a monetary order?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The hearing lasted 86 minutes and the tenant's evidence contains 74 pages.

The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the tenancy started on October 06, 2019. LS does not know when the tenancy started. Both parties agreed that monthly rent of \$450.00 is due on the fifth day of the month. The tenancy agreement was submitted into evidence. It indicates the landlord is JR.

LS stated the rental unit was managed by a company called "C&N backpackers". LS testified that JR was an employee of C&N backpackers and Main Street Hostel started managing the rental unit in June 2020.

LS believes that she informed the tenant in June 2020 that Main Street Hostel purchased the rental building. LS submitted a receipt dated June 25, 2020 indicating that "Main St Hostel" received from the tenant the amount of \$1,250.00.

The tenant said the landlord is LS.

Both parties agreed the landlord served and the tenant received the June Notice on June 08, 2022.

The tenant submitted this application on June 12, 2022 and continues to occupy the rental unit.

The tenant submitted the June Notice into evidence. It is dated June 08, 2022 and the effective date is June 18, 2022. It indicates the tenant failed to pay rent in the amount of \$3,600.00 due on June 08, 2022. The named landlord is Main Street Hostel.

Both parties agreed the landlord serve the June Notice with the ledger submitted into evidence. It indicates the tenant did not pay monthly rent in the amount of \$450.00 on October, November and December 5, 2021, January, February, March, April and May 5, 2022 and the total amount of rental arrears on June 08, 2022 was \$3,600.00.

The tenant affirmed that she tried to pay rent in the amount of \$450.00 on October 05, 2021 in cash and the landlord refused to receive it. The tenant offered money orders to pay rent on October 28 and November 30, 2021 and the landlord refused to receive the money orders.

The tenant submitted into evidence a photograph showing a money order dated October 27, 2021 in the amount of \$425.00.

The tenant stated that she was in a hospital from February 17 to April 06, 2022 and she was only able to re-enter the rental unit because the Compliance Enforcement Unit of the Residential Tenancy Branch (RTB) helped her to re-enter the rental unit. The tenant confirmed she was able to re-enter the rental unit on April 06, 2022.

The tenant did not pay rent due on May 05, 2022 and negotiated a settlement plan for the rental arrears.

The tenant submitted into evidence a settlement plan dated May 22, 2022:

It is our sincere hope that the two RTB orders dated May 9, May 11, 2022 plus a CEU warning letter dated September 8, 2020 would completely stop you from incorrectly commenting on the tenant's life goals...

[...]

Under Section 7, 27(2), 28 of the Act, the tenant has a right to deduct rent and is entitled to compensation for loss of quiet enjoyment, damage, and costs. "Order of Possession for The Tenant" prevents you from illegally evicting the tenant while unfulfilling your obligation to pay damage and loss that result.

[...]

Landlord's owing amount: \$4,926.62.

The tenant testified that she did not pay rent due on June, July and August 05, 2022 because of the costs she incurred due to the landlord's failure to comply with the act when she was not allowed to enter the rental building from February 17 to April 06, 2022.

The tenant submitted a written submission:

33. The landlord's malicious intents to harm the tenant as stated above have largely jeopardized the vulnerable tenant's ability to pay the rent in full amount when the tenant's extremely limited monthly income is constrained for shelter and food only. And the portion for food has doubled and the portion for shelter has been largely deducted for illegal eviction-resulted emergency costs for the past 7 months.

LS said that she did not cash the money order provided by the tenant for rent due on October, November and December 2021 because the money order's beneficiary was LS, not Main Street Hostel.

LS affirmed that the tenant offered to pay half of the rent in February 2022, but the landlord did not accept it because the tenant only offered to pay half of the amount owed.

LS stated the tenant has not paid or attempted to pay rent in January, March, April, May, June, July and August 2022.

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.

Landlord

Based on LS' testimony and the receipt dated June 25, 2022, I find that LS proved, on a balance of probabilities, that Main Street Hostel informed the tenant in June 2020 that Main Street Hostel is the landlord.

The June Notice

Based on the landlord's convincing testimony, I find the landlord served the June Notice in person and the tenant received it on June 08, 2022, in accordance with section 88(a) of the Act.

I find that the tenant's application was submitted before the five-day deadline to dispute the Notice, in accordance with section 46(4) of the Act.

I accept the uncontested testimony that monthly rent in the amount of \$450.00 is due on the fifth day of the month.

I accept the uncontested testimony that the tenant did not pay rent due on May 05, 2022.

Section 26(1) of the Act 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.

The Act allows tenants to withhold rent on five occasions:

1. Section 19(2): When a landlord collects a security deposit or pet damage deposit that is above the permitted amount.
2. Section 33(7): When the tenant paid for emergency repairs.
3. Section 43(5): When a landlord imposes a rent increase that is above the amount allowed by law.
4. Section 51(1.1): When the landlord issues a notice to end tenancy under section 49 of the Act.
5. Section 65(1): When an arbitrator orders the tenant to withhold rent.

Based on the tenant's undisputed testimony, the May 22, 2022 settlement plan and the written submission, I find the tenant withheld rent due on May 05, 2022 because the tenant claims that she suffered losses due to the landlord's non-compliance with the Act.

The tenant did not indicate that she incurred any of the five possibilities to withhold rent in May 2022.

I find the tenant was not authorized to withhold rent for May 2022.

Pursuant to section 46(1) of the Act, 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.

Pursuant to section 53(2) of the Act, and considering the leger, I correct the due date of the unpaid rent to May 5, 2022. I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's representative, gives the address of the rental unit, states the ground to end tenancy and it is in the approved form.

Based on the above, I find the tenancy ended on June 18, 2022, per section 44(1)(a)(ii) of the Act. I dismiss the tenant's application to cancel the June Notice.

Residential Tenancy Branch Policy Guideline 3 states:

Section 44 of the Residential Tenancy Act and section 37 of the Manufactured Home Park Tenancy Act set out when a tenancy agreement will end. **A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord**

recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

[...]

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- **the tenant has disputed a notice to end tenancy** issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- **the notice to end tenancy complies with section 52 of the RTA** (section 45 of the MHPTA); and
- **the director, during the dispute resolution proceeding, dismisses the tenant's application** or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

[...]

Under section 46(5) of the RTA (section 39(5) of the MHPTA), a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice if they do not pay the rent or make their application for dispute resolution within 5 days after receiving the notice to end tenancy. If the tenant submits their application late and the director does not extend the time limit under section 66 of the RTA (section 59 of the MHPTA), then the tenancy ended on the effective date of the notice to end tenancy.

Only rent owing up until the effective date of the notice to end tenancy would constitute unpaid rent for the purpose of section 55 (1.1) of the RTA (section 48 (1.1) of the MHPTA).

(emphasis added)

Based on the testimony offered by both parties, I find that when the tenancy ended on June 18, 2022 the tenant was in rental arrears in the amount of \$3,600.00 for October,

November and December 2021, January, February, March, April and May 2022 rent and that currently the tenant has not paid this amount.

Per section 55(1.1) of the Act, I award landlord Mains Street Hostel \$3,600.00 for October, November and December 2021, January, February, March, April and May 2022 unpaid rent.

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to landlord Main Street Hostel effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 55(1.1) of the Act, I grant landlord Main Street Hostel a monetary order in the amount of \$3,600.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: August 24, 2022

Residential Tenancy Branch