



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNC, CNR, RP, FFT (x2)
For the Landlord: MNU-DR, OPU-DR, FFL

Introduction

On April 11, 2022 the Tenant applied for dispute resolution for an order cancelling the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord. They also applied for an order for repairs in the rental unit, and reimbursement of the Application filing fee.

On May 10, 2022 the Landlord applied for an Order of Possession of the rental unit, and recompense of unpaid utility amounts. They also applied for reimbursement of the Application filing fee. The Landlord filed this as a Direct Request; however, this application cannot be considered by that method when there is a prior extant request from the Tenant already in place.

On May 7, 2022 the Tenant filed another Application, in response to the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) issued by the Landlord. They applied for reimbursement of this separate Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 11, 2022. Both parties attended the teleconference hearing.

Preliminary Matter – participants' service of the Notice of Dispute Resolution

The Tenant provided that they served their first Application (i.e., their challenge to the One-Month Notice) via registered mail to the Landlord's address provided on that One-Month Notice document. In the hearing the Landlord provided that this address was not correct, so they received the Notice of Dispute Resolution Hearing information from the Tenant about one month later.

I find the Tenant served the Notice of Dispute Resolution as required, to the address for service. This was the address the Landlord provided on the One-Month Notice, and the Landlord in the hearing stated they provided this address on the One-Month Notice in error.

As per the Rules of Procedure Rule 3.5, I am satisfied that the Tenant served the Landlord with the Notice of Dispute Resolution Proceeding package as required. There was no prejudice to the Landlord in this instance.

In the hearing the Landlord advised they notified the Tenant of their own Application by serving the Notice of Dispute Resolution to the Tenant's family member. This included their prepared evidence, being utilities that were prepared earlier. The Tenant confirmed they received this from the Landlord as the Landlord described.

For the Tenant's second Application – in response to the 10-Day Notice – the Tenant used the same address as their prior Application, i.e., the Landlord's address they provided in error. The Landlord stated in the hearing they did not receive notification from the Tenant for this second Application.

I find it reasonable that the Tenant used the first address provided to the Landlord, based on that given to them on the original One-Month Notice. I find the Tenant was not required to inquire to the Landlord about the correct address for service when the Landlord provided multiple notices that overlapped and provided conflicting information. The Landlord was the source of the inconsistency; therefore, I find there was no prejudice to them when the Tenant provided Notice of Dispute Resolution proceeding to an address they were provided by the Landlord, without evidence that the Landlord rectified the issue.

For the purposes of this hearing, I find either party served adequate notice of their Notices for Dispute Resolution as required by the *Act* and the Rules of Procedure. I proceed with this decision on that basis.

Preliminary Matter – Tenant’s request for repairs

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

I dismiss the Tenant’s request for repairs in the rental unit, with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord cancel or withdraw the One-Month Notice?

Is the Tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice?

Is the Tenant entitled to recover the filing fee for their Applications, pursuant to s. 72 of the *Act*?

If the Tenant is unsuccessful, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(1.1) of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the Act?

Background and Evidence

Not all details of the parties' evidence and submissions are reproduced here. My review of evidence and the Tenant's positions on various matters in this section is confined to the determinative issue, with the analysis forming the rationale for my decision set out in the following section.

The Landlord provided a copy of the current tenancy agreement between the parties. This establishes that the tenancy started on September 25, 2021. The rent amount in the agreement is \$2,000 per month payable on the 25th of each month.

The Landlord signed a 10-Day Notice on May 3, 2022, assigned the end-of-tenancy date as May 13, 2022. The second page of this document shows the Landlord's notification to the Tenant that the Tenant failed to pay the amount of \$2,000 that was due on May 3, 2022, as well as utilities in the amount of \$705.21 that was due on May 9, 2022.

In the hearing, the Landlord stated this was in error, where they indicated May 3 as the due date for rent. This conflicts with what the tenancy agreement set out, as payment due on the 25th of each month.

The Landlord then signed a second 10-Day Notice on May 23, 2022. They served this to the Tenant on May 25, 2022 via an agent who they hired for this purpose. That agent provided a "Proof of Service" document that sets out they served the 10-Day Notice by leaving a copy with the Tenant or an adult who lives with the Tenant. In the hearing, that agent stated they served this document to the Tenant's brother, who also was living in the rental unit.

In the 10-Day Notice, the Landlord provided the end-of-tenancy date as June 3, 2022. This was for a rent amount due on April 25, 2022, for \$2,000.

The Tenant in the hearing stated they were not sure whether they applied to the Residential Tenancy Branch to dispute this second 10-Day Notice.

In specific regard to the 10-Day Notice the Landlord signed on May 23, 2022, the Tenant stated they did pay this amount of rent; however, this occurred after service of the 10-Day Notice to them. The Tenant's family member in the hearing described trying to e-transfer on May 29 but this "did not go through." The Tenant then went to the bank, likely on May 31. At this time, they were trying to resolve the situation but could not do so on the phone. The Tenant provided that they paid the required \$2,000 on June 1st.

In the hearing, the Landlord confirmed the Tenant paid the required \$2,000 on June 1st. The Landlord provided "use-and-occupancy" rental receipts dated May 28, June 12, and June 28. On a Monetary Order Worksheet, the Landlord claimed rent amounts in full for July and August 2022.

Aside from this, regarding rent payments in general, the Tenant presented that sometimes they pay 1 or 2 days late, which the Landlord was aware of. This single month they received an end-of-tenancy notice from the Landlord.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find there was a valid tenancy agreement in place between the parties. The agreement is specific on the date rent is due on the 25th of each month. I find the Tenant was aware of the rent payment date. Moreover, they were aware from the Landlord's previous attempt at ending a tenancy – which the Landlord acknowledged that they issued with an error in the document, thereby withdrawing it – that the Landlord was taking late rent payments seriously.

I find it clear that the Tenant did not make the required rent payment on April 25, 2022 as indicated on the 10-Day Notice. They described attempting an e-transfer, then visiting the bank to complete the payment of that full rent amount, and this occurred on June 1. The Landlord confirmed this date.

This means the Tenant did not pay the amount within the 5-day timeframe as indicated on the 10-Day Notice. I find the evidence shows the Tenant was fully informed of the rent amount owing.

The *Act* s. 46(5) provides that when a tenant who has received a 10-Day Notice does not pay the rent or make an application for dispute resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I find the Tenant did not pay the rent amount outstanding within the designated time period. Moreover, they did not amend their Application to contest individually 10-Day Notice that the Landlord served to them on May 25, 2022, nor did they file a new Application. I find they are conclusively presumed to have accepted that the tenancy is ending.

Under s. 55 of the *Act*, when a tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an order of possession.

The *Act* s. 55(1.1) provides that I must grant an Order requiring the payment of the unpaid rent. As per the Landlord's evidence on their Monetary Order Worksheet, I grant the full amount of rent for July 2022. The Landlord also claimed rent for August 2022; however, with the rent payment due on the 25th of August, and the hearing held on August 11, 2022, I find it presumptuous of the Landlord to claim that month's rent prior to the rent payment date. I grant the outstanding amount only of \$2,000 with a Monetary Order. The Landlord must file a separate application for any other rent amounts outstanding.

I strongly caution the Landlord to seek assistance going forward on any aspect of a future tenancy. Their management of this tenancy was rife with errors throughout, and I find their communication to the Tenant was very poor. I find this did not impact the rights of the Tenant here; however, the Landlord's errors and misconceptions are serious enough that in different circumstances they could constitute serious breaches of either the tenancy agreement, or the *Act*.

Because of the confusion over the Landlord's address that impacted the smooth operation of this process for this dispute resolution hearing – *i.e.*, being unclear on their address for service – I grant no refund of the Application filing fee to the Landlord.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for a cancellation of the 10-Day Notice.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the unpaid rent from July 2022. This amount is \$2,000. The Landlord is provided with this Order in the above terms, and they must serve the Tenant with this Order as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it may be enforced as an order of that Court.

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

Dated: August 16, 2022

Residential Tenancy Branch