



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated June 20, 2022 ("10 Day Notice").

The Tenant and two agents for the Landlord, D.C. and R.H. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Agent's email address in the Application, and the Agent confirmed his email address in the hearing. The Tenant said he would like the Decision mailed to him at the residential property. The Parties also confirmed their understanding that the Decision would be mailed to the Tenant and emailed to the Landlord.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 1999, with a (current) monthly rent of \$922.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated June 20, 2022, and which has the rental unit address. The 10 Day Notice was served in person on June 20, 2022, with an effective vacancy date of July 1, 2022, and it was served on the grounds that the Tenant failed to pay the Landlord \$1,598.00 that was due on June 1, 2022.

In the hearing, the Agent said that the amount of rent owing has grown since the 10 Day Notice was served. The Agent said that the Tenant has continued to pay his former rent amount of \$695.00 each month, rather than his current rent of \$922.00. The Agent said:

The rental unit he is residing in is a subsidized housing unit. [The Tenant] pays 30% of his gross monthly income as a contribution. His annual review was December 1, 2021, so his rent increased because his income did, and rent went from \$695.00, to \$922.00. However, he was continuing to pay the old rent amount, which resulted in arrears. When we contacted [the Tenant], he said he was paying too much rent for his unit, and no explanation of why, other than he didn't think he had to pay that amount for his rental unit.

The Agent requested that their Application for a monetary order be increased to reflect the changing amount of this debt. He said that the amount owing as of September 1, 2022, is \$2,279.00.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing in full. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after updating the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from \$1,598.00 to \$2,279.00.

After the Agent explained the Landlord's claims, the Tenant said

Before the date they have set out for the rent increase, I invited them for a dialogue, telling them the issues of my rent increase. It was getting too much.... I received a letter telling me size doesn't matter. It is based on 30% of income. So okay, but after one year going from \$695.00 to \$922.00? . . . It is 537 meters square, I explained to them. I have proof of that.

How in this building are there people paying \$275.00 or \$300.00? They live in a one-bedroom apartment that's double the size than me. Another issue is that even the same sized bachelor apartment and they pay \$290.00 or \$300.00. They live in the same bachelor like me. It is really shocking to me. ... I live in my own place knowing that other people pay less than me and live in better housing.

I asked the Tenant if he agreed that he had failed to pay his rent in full since it went up to \$922.00 and he said: "That's true, because I was trying to explain what is the condition that I live."

The Agent submitted evidence entitled "Account_Statement_September_1_2022" ("Account Statement"). The Account Statement details the Tenant's rent payments to the Landlord since January 2018. The Agent said that the Tenant's rent was increased as of January 2022, but that the Tenant had a credit in his account of \$459.00 from prior overpayments. As such, the Tenant's failure to pay the full \$922.00 each month did not result in a debit balance until March 1, 2022.

The balances from the Account Statement this year are set out in the following table.

DATE	AMOUNT OWING	AMOUNT PAID	BALANCE OWING*
Feb. 1, 2022	\$922.00	\$695.00	(\$5.00)
March 1, 2022	\$922.00	\$695.00	\$222.00
April 1, 2022	\$922.00	\$695.00	\$449.00
May 1, 2022	\$922.00	\$695.00	\$676.00
June 1, 2022	\$922.00	\$695.00	\$903.00
July 1, 2022	\$922.00	\$695.00	\$1,130.00
Aug. 1, 2022	\$922.00	\$695.00	\$1,357.00
Sept. 1, 2022	\$922.00	\$695.00	\$2,279.00

* above monthly rent amount due.

The Tenant pointed out a letter he received from Service Canada dated July 2022. The Tenant said:

In July, I received a letter from Service Canada telling me that except in July, I will only receive \$914.65 for my old age security and income supplements. \$700 and something from [the Landlord] was used to set up my \$922.00, so from July on, I stopped receiving the \$1,500.00 and something combined in income supplements. So that means you have to consider from July 1, I am not receiving the full amount that the [the Landlord] used to calculate my rent. I receive only \$914.55.

I find that this indicates that the Tenant earned 39% less income as of July 2022, and that therefore, the Landlord's rent calculation needs to be adjusted as of that date. However, as I am not familiar with the Landlord's rent calculation formula, I decline to recalculate the amount owed by the Tenant from July through September.

The Agent said:

Unfortunately, I never received documents showing that his OAS has increased in July. Normally, his rent calculation is based on his information from the past year. So, if his income did go down and he provided us with that information, we

would be able to adjust his rent accordingly, but unfortunately he never provided documentation to [the Landlord] indicating that his income had decreased.

The Tenant said that he delivered a copy of the Service Canada letter to the Landlord's organization "last week and hand delivered the paper work", he said.

The Agent questioned whether Service Canada would decrease a person's income, unless the person has another source of income. He talked about how he could look for the Service Canada documentation and back-date the rent increase. He said:

...but it will only make a difference from July onward – that's still a few thousand dollars owing. I can make arrangements for a payment arrangement.

If we were issued an order of possession, I will adjust the rent for [the Tenant] and work out a repayment agreement. If he agrees to those, I won't serve the order of possession. If he doesn't agree, then there's no choice, but to issue the order of possession.

The Tenant said: "Read my pages to understand my issue, which is like conditions endured by many seniors being dependent on government. They are in the last phase of their life, and it's hard."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The Tenant acknowledged that he has not paid the amount the Landlord says is owing in rent for 2022, based on the rent increase that took effect on January 1, 2022. The Tenant said that his rent was too high, given the condition of the rental unit, and because other tenants have larger suites and pay less than he does.

However, I find that the Tenant did not provide sufficient evidence to prove that he is paying too much for January through June 2022.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$1,598.00 is correct, as it was based on outstanding rent amount for June 2022. However, given that the Tenant's income changed in July 2022, I find I can no longer rely on the Landlord's calculations for what is owed to them in rent by the Tenant for July through September.

I note that the Agent proposed that the Tenant go on a repayment plan with the Landlord to catch up with the rent outstanding. The Tenant was open to this, if it meant that he did not have to move. The Landlord said he would not enforce the order of possession, unless the Tenant is unwilling to comply with the repayment plan.

I find that the Tenant owes the Landlord \$1,598.00 in unpaid rent owed from the months of January through June 2022.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Further, I find that the Landlord has proven the validity of the 10 Day Notice on a balance of probabilities, and therefore, I dismiss the Tenant's Application to cancel the 10 Day Notice.

Accordingly, I find that the Landlord is eligible for a monetary order pursuant to section 55 (1.1) of the Act. However, as the Agent said that he is going to arrange a repayment plan for the Tenant for his rent arrears, I decline to award a monetary order in this specific set of circumstances.

However, based on the evidence before me, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has

not paid full rent throughout 2022, the Order of Possession will be effective two days after service of the Order on the Tenant. This Order is granted on the condition that the Landlord arranges a re-payment plan for the Tenant, allowing him to continue living in the rental unit, as long as he pays his rent, including the re-payment portion.

Conclusion

The Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply, as the Landlord provided sufficient evidence to prove that the Tenant has not paid his rent in full for most months in 2022.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as necessary. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 14, 2022

Residential Tenancy Branch