



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: FFT, CNR, CNC, PSF, LRE, OLC, MNDCT, RP, RR
FF: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on May 2, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent and utilities;
- to cancel a One Month Notice for Cause;
- an order restricting the Landlord’s right to enter;
- an order that the Landlord provide a service for facility;
- an order that the Landlord comply with the Act;
- a monetary order for damage or compensation;
- an order for regular repairs;
- an order granting a rent reduction; and
- an order granting the recovery of the filing fee

The Landlord’s Application for Dispute Resolution was made on June 22, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent and utilities;
- a monetary order for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent confirmed receipt of the Tenant's Application. As such, I find this document was sufficiently served pursuant to Section 71 of the *Act*.

The Landlord's Agent stated that he served the Landlord's Application and documentary evidence to the Tenant by Canada Post Registered Mail. The Landlord's Agent was unable to recall the date of service. The Tenant stated that he did not receive the Landlord's Application. The Landlord provided several Registered Mail receipts, however, they were all dated June 8, 2022 which pre dates the June 22, 2022 date in which the Landlord submitted their Application. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant was sufficiently served with the Landlord's Application and documentary evidence, therefore, I dismiss the Landlord's Application with leave to reapply.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the 10 Day Notice, and the One Month Notice to End Tenancy.

The Tenant's request for an order restricting the Landlord's right to enter, an order that the Landlord provide a service for facility, an order that the Landlord comply with the *Act*, a monetary order for damage or compensation, an order for regular repairs; and an order granting a rent reduction are dismissed with leave to reapply.

The hearing continued based on the Tenant's Application to cancel the 10 Day Notice and the One Month Notice. I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order cancelling the 1 Month Notice, pursuant to Section 47 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession and a monetary order, pursuant to Section 55 and 67 of the *Act*?
5. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 15, 2019. The Tenant is required to pay rent in the amount of \$1,600.00 which is due on the first day of each month. The Tenant is required to pay 30 percent of the utilities to the Landlord. The Tenant paid a security deposit in the amount of \$800.00 which the Landlord currently holds. A tenancy agreement was provided in support.

The Landlord's Agent stated that the Tenant had not paid rent for May and June 2022. Furthermore, the Landlord's Agent stated that the Tenant failed to pay utilities to the Landlord in the amount of \$538.42. The Landlord's Agent testified that he subsequently issued a 10 Day Notice, dated June 8, 2022 (the "10 Day Notice") with an effective vacancy date of June 24, 2022.

The Landlord's Agent stated that he served the 10 Day Notice by Canada Post Registered Mail on June 8, 2022. The Landlord provided a copy of the registered Mail Receipt along with a picture of the envelope containing the 10 Day Notice. The Landlord's Agent stated that the Tenant has not made any payments to the Landlord since the 10 Day Notice was served to the Tenant.

The Landlord's Agent stated that currently, the Tenant owes the Landlord rent for May, June, July, August, and September 2022 in the amount of \$8,000.00. The Landlord's Agent stated that he is unsure as to the current amount of utilities owed to the Landlord. The Landlord's Agent confirmed that he did not submit a utility bill in support.

The Tenant responded by stating that he did not receive the 10 Day Notice dated June 8, 2022. The Tenant stated that he has not received any mail since May 15, 2022. The Tenant stated that he has contacted Canada Post and the Police to determine the reason why he is not getting mail. The Tenant confirms that he has not paid any rent or utilities to the Landlord beginning in May 2022. The Tenant stated that he had a verbal agreement with the Landlord that he would be able to pay what he can when he was able to. The Tenant stated that he felt as though he was part of the Landlord's family and that he would often help the Landlord with tasks such as shoveling the driveway.

The Tenant stated that the Landlord's Agent has not honoured the verbal agreement made between the Tenant and the Landlord. Instead, he demanded payment of rent and has issued a notice to end tenancy. The Tenant stated that there is an issue with the heat in the rental unit, and that he was made to sell his motorcycle in an attempt to catch up on his rent. The Tenant stated that he is frustrated and has stopped paying rent as a result.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states 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.

I find that the Landlord served the 10 Day Notice dated June 8, 2022, with an effective vacancy date of June 24, 2022, by Canada Post Registered Mail on June 8, 2022. While the Tenant stated that he has not been receiving mail, I find that the Tenant has provided insufficient evidence to demonstrate that there is an issue preventing the Tenant's ability to receive mail. Pursuant to Section 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the 10 Day Notice five days later, on June 13, 2022.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenant made an Application to cancel the 10 Day Notice, I accept the Tenant's own testimony that he has not paid any amount of rent to the Landlord beginning in May 2022. As such, I dismiss the Tenant's Application without leave to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As I found that the tenancy has ended based on the 10 Day Notice, I make no findings on the validity of the One Month Notice.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); 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.

With respect to the Landlord's entitlement to an order requiring the payment of unpaid rent, I accept that the parties agreed that the Tenant is required to pay rent in the amount of \$1,600.00 which is due on the first day of each month. I accept that the parties agreed that the Tenant has not paid any rent beginning in May 2022. As such, I find that the Landlord is entitled to compensation in the amount of \$8,000.00 for unpaid rent for May, June, July, August and September 2022. I note this amount was amended from the amount listed on the 10 Day Notice pursuant to the Rules of Procedure 4.2. While the Landlord noted that the Tenant failed to pay utilities in the amount of \$538.42, I find that the Landlord provided insufficient evidence to support this cost. As such, I decline to award the Landlord compensation for unpaid utilities.

I order that the Landlord retain the Tenant's security deposit in partial satisfaction of their monetary compensation. Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$7,200.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
<i>Unpaid rent:</i>	<i>\$8,000.00</i>
<i>LESS security deposit:</i>	<i>-\$800.00</i>
<i>TOTAL:</i>	<i>\$7,200.00</i>

Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$7,200.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 13, 2022

Residential Tenancy Branch