



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 12, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 18, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on September 20, 2022.

The Tenant attended the hearing. The Landlord attended the hearing as well, with J.B. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent, that

the Tenant's claim for monetary compensation would be dismissed, and that the Tenant is at liberty to apply for this claim under a new and separate Application.

The Tenant advised that he served the Notice of Hearing package to the Landlord, but then he advised that he was not sure if he did so and that he could not remember. J.B. advised that the Landlord never received a Notice of Hearing package from the Tenant. Based on this undisputed testimony and the lack of any evidence from the Tenant supporting that this package was served, I find it more likely than not that the Tenant did not serve this package to the Landlord. As such, the Tenant's Application regarding the dispute of the Notice is dismissed without leave to reapply.

As well, he stated that he did not submit any documentary evidence for consideration on this file.

J.B. advised that he served the Tenant with the Notice of Hearing and evidence package by registered mail on June 5, 2022 (the registered mail tracking number is noted on the first page of this Decision). He stated that this package was returned to sender. As well, he submitted additional late evidence to the Residential Tenancy Branch in September 2022; however, he did not serve this evidence to the Tenant. The Tenant advised that he did not receive the Notice of Hearing and evidence package by registered mail as he was having difficulties receiving mail at the dispute address. He did not make any submissions with respect to addressing this alleged mail issue with Canada Post though.

Based on this undisputed evidence before me, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing and evidence package five days after it was mailed. As this evidence was served to the Tenant in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this evidence and will consider it when rendering this Decision. However, as the Landlord's additional evidence was not served to the Tenant, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2022, that rent was established at an amount of \$6,100.00 per month, and that it was due on the first day of each month. A security deposit of \$3,050.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

J.B. advised that the Notice was served to the Tenant by being posted to the Tenant's door on May 8, 2022. The Tenant clearly received it as he disputed it on May 12, 2022. The Notice indicated that \$6,100.00 was owing for rent on May 1, 2022. As well, the effective end date of the tenancy was noted on the Notice as May 19, 2022.

J.B. testified that the Tenant did not pay any rent on May 1, 2022. Thus, the Notice was served. In addition, he stated that he has not paid any rent since service of the Notice. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount of **\$30,500.00** for the rent owed up to the date of the hearing. He confirmed that the Tenant did not have any authority under the *Act*, or permission from the Landlord, to withhold the rent.

The Tenant confirmed that he did not pay May 2022 rent when it was due, and when he was informed of all the reasons why he may be permitted to withhold the rent under the *Act*, he acknowledged that he did not have any authority to legally withhold the rent. He conceded that he simply "did not bother paying" the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice.

The undisputed evidence before me is that the Tenant received the Notice on May 8, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date."*

As the Notice was received on May 8, 2022, the Tenant must have paid the rent in full or disputed the Notice by May 13, 2022, at the latest. However, the undisputed evidence is that the Tenant did not pay the rent in full by this date to cancel it. Moreover, while the Tenant did dispute this Notice, he was informed of all of the following reasons for why he might be permitted to withhold the rent:

1. The Tenant has an Arbitrator's Decision allowing the deduction.
2. The Landlord illegally increased the rent.
3. The Landlord has overcharged for a security or pet damage deposit.
4. The Landlord refused the Tenant's written request for reimbursement of emergency repairs.
5. The Tenant had the Landlord's written permission allowing a rent reduction.

After being informed of these specific scenarios which would permit the Tenant to withhold the rent, he confirmed that none of these applied and that he did not have a valid reason under the *Act* for withholding the rent. As well, he acknowledged that he has not paid any rent since service of the Notice. Consequently, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Moreover, regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$30,500.00** for the outstanding rental arrears.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

| Item | Amount |
|-----------------------------------|--------------------|
| Rental arrears for May 2022 | \$6,100.00 |
| Rental arrears for June 2022 | \$6,100.00 |
| Rental arrears for July 2022 | \$6,100.00 |
| Rental arrears for August 2022 | \$6,100.00 |
| Rental arrears for September 2022 | \$6,100.00 |
| Filing fee | \$100.00 |
| Total Monetary Award | \$30,600.00 |

Conclusion

The Tenant's Application for Dispute Resolution with respect to the Notice is dismissed without leave to reapply.

Based on the above, an Order of Possession is granted to the Landlord 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$30,600.00** in the above terms, and 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 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: September 20, 2022

Residential Tenancy Branch