



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, CNR-MT, MNDCT, RR, AAT, OPT

Introduction

This Tenant made an Application for Dispute Resolution made on May 31, 2022, which was amended on September 16, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order authorizing the Tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 27, 2022 (the 10 Day Notice);
- an order granting more time to dispute the 10 Day Notice;
- an order granting compensation for monetary loss or other money owed;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the Landlord grant access to the rental unit for the Tenant or their guests; and
- an order of possession.

The Tenant attended the hearing and was accompanied by: TM, her boyfriend; LH, a support person; NK, an outreach worker; and SM, a support person. The Landlord was represented at the hearing by BR, TW, and GR, agents. All those who gave oral testimony during the hearing provided a solemn affirmation before doing so.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. BR acknowledged receipt. The Tenant also testified that an amendment was served on the Landlord by registered mail. BR testified she is unsure whether the amendment was received. However, as noted below, the issues raised in the amendment are dismissed with leave to reapply as appropriate and service of these materials is not necessary.

The Landlord testified the evidence upon which they intend to rely was served on the Tenant by registered mail. Tenant testified that she received the Landlord's evidence via email.

No further issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Severance of Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. During the hearing, the parties were advised that I would be exercising my discretion to dismiss all but the Tenant's requests an order granting more time to dispute the 10 Day Notice and an order cancelling the 10 Day Notice, with leave to reapply. However, considering my findings below, I dismiss all but the Tenant's request for an order granting compensation for monetary loss or other money owed, without leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to an order granting more time to dispute the 10 Day Notice?
2. Is the Tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

The parties agreed the Tenant lives with her boyfriend, TM, in a 3-bedroom rental unit. The accommodation is provided as part of the Tenant's employment with the Landlord. The parties agreed the tenancy began on November 1, 2018. Currently, rent of \$1,125.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$500.00.

On behalf of the Landlord, BR testified that the Tenant has not paid rent when due. Accordingly, the Landlord issued the 10 Day Notice. BR testified the 10 Day Notice was served on the Tenant by registered mail on April 27, 2022 and provided a tracking number in support.

The 10 Day Notice states that rent of \$10,725.00 remained unpaid at the time it was issued on April 27, 2022. BR testified the Tenant has not made any further payments since the 10 Day Notice was issued, and that \$17,125.00 is currently outstanding. A document outlining rent due and paid was submitted into evidence by the Landlord.

In reply, the Tenant acknowledged receipt of the 10 Day Notice on May 15, 2022, by email. During the hearing, it was noted that the Tenant's application was not made until May 31, 2022. When asked why the Tenant should be granted an order allowing more time to dispute the 10 Day Notice, she advised that the application was submitted late because she had to gather additional information. She also referred to a letter from her physician dated May 24, 2022, which states: "This patient needs to remain off work due to medical reasons until June 25, 2022." TM testified that it was challenging to dispute the 10 Day Notice on time.

With respect to the unpaid rent, the Tenant did not dispute that rent was not paid as alleged by BR. The Tenant testified she has applied for a number of positions but has not received any work. The Tenant also testified that other employees hired after the Tenant have been receiving work before her.

In response, BR testified the Tenant worked until the end of December 2021. BR also noted 33 refusals to work in 2021 and 13 refusals to work in 2022. The Tenant testified that some of these refusals were because she did not have sufficient money to pay for gas to drive herself to work.

Analysis

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

Section 46(4) of the Act confirms that a tenant has five days after receiving a notice to end tenancy for unpaid rent or utilities to pay rent in full or to dispute it by making an application for dispute resolution. In this case, I find the Tenant did not provide testimony or refer to evidence to enable me to conclude rent was paid within five days after receipt of the 10 Day Notice. In addition, even if I accept the evidence of the Tenant who testified that the 10 Day Notice was received on May 15, 2022, the Tenant's application was not made until May 31, 2022. Therefore, I find the Tenant applied late and has not satisfied the requirement under section 46(4) of the Act.

However, the Tenant has requested an order allowing more time to dispute the 10 Day Notice. Section 66(1) of the Act permits an arbitrator to extend a time limit established by this Act only in exceptional circumstances. Policy Guideline #36 describes exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

After carefully considering the evidence and submissions of the parties, I find there is insufficient evidence of exceptional circumstances to justify granting more time to dispute the 10 Day Notice. The reasons provided by the Tenant are not “very strong and compelling”. First, although the Tenant testified that she needed more time to gather information, this is a burden placed upon any party wishing to make or respond to an application for dispute resolution.

Second, with respect to the letter from the Tenant’s doctor dated May 24, 2022, I find there is insufficient evidence before me to conclude the Tenant’s health status impacted her ability to dispute the 10 Day Notice within five days after receipt. Indeed, the Tenant testified the 10 Day Notice was received on May 15, 2022. As a result, pursuant to section 46(4) of the Act, the Tenant had until May 20, 2022 to dispute the 10 Day Notice, which was four days before the date on the doctor’s letter. In addition, the Tenant did not provide reasons why her health status impacted her ability to dispute the 10 Day Notice on Time.

Considering the above, I find that the Tenant’s application was made late and that there is insufficient evidence of exceptional circumstances to justify granting more time to dispute the 10 Day Notice. Therefore, I find that the Tenant’s request for an order cancelling the 10 Day Notice is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord.

As noted above, the Tenant’s application is dismissed. In addition, I find that the 10 Day Notice is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. Therefore, I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act. As a result, pursuant to section 55(1) of the Act, I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

In addition, section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring payment of the unpaid rent.

As note above, I have found that the Tenant's application is dismissed ad that the 10 Day Notice complies with the form and content requirements of section 52 of the Act. Further, I accept the evidence of BR, which was not disputed by the Tenant, that rent of \$17,125.00 remains unpaid. Therefore, I grant the Landlord a monetary order for unpaid rent in the amount of \$17,125.00.

Conclusion

The Tenant's requests for orders granting more time to dispute the 10 Day Notice and to cancel the 10 Day Notice are dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

By operation of section 55(1.1) of the Act, the Landlord is granted a monetary order for unpaid rent in the amount of \$17,125.00. The monetary order must be served on the Tenant. The monetary order 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: October 13, 2022

Residential Tenancy Branch