



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: Application 1: OPR OPC MNRL-S FFL
Application 2: MNR-DR OPR-DR FFL

For the tenant: CNR-MT OLC MNDCT RR MNRT FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords filed two applications:

1. For a monetary order for unpaid rent or utilities, for an order of possession based on an undisputed 10-Day Notice, for an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated May 8, 2022 (“1 Month Notice”) and to recover the filing fee.
2. For a monetary order for unpaid rent or utilities and for an order of possession through based on an undisputed 10-Day Notice through the Direct Request process and to recover the cost of the filing fee.

The tenant applied for more time to make an application to cancel a 10 Day Notice, for a rent reduction, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for a monetary claim of \$31,100 for compensation or money owed and for emergency repairs, and to recover the cost of the filing fee.

The tenant and the landlords attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act.

I have reviewed all 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application for more time to file an application to dispute a 10-Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request for more time to make an application to dispute a 10-Day Notice and the cost of the filing fee at this proceeding. The balance of the tenant’s application is dismissed, **with leave to re-apply**.

Furthermore, I find the landlords’ application clearly indicates that they are seeking unpaid rent of \$150 and \$750, I amend the landlords’ applications pursuant to section 64(3)(c) of the Act to include unpaid rent for the additional months described during the hearing for a total in unpaid rent of \$5,750 before the filing fees. I find that such an amendment does not prejudice the tenant as the tenant ought to know that they are required to pay rent in accordance with section 26 of the Act, which will be described later in this Decision.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the Decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

Issues to be Decided

- Should the tenancy end, and if so, by what method under the Act?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- What should happen to the tenant's security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee(s)?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on November 1, 2021. The monthly rent is \$1,250 per month and is due on the first day of each month. The parties confirmed that the tenant paid a \$625 security deposit.

Although several 10-Day Notices were discussed during the hearing, the landlords served all of the 10-Day Notices via email and confirmed that they did not have the permission of the tenant to serve any of the 10-Day Notices via email. The landlords also confirmed that the tenant did not respond to any of the email sent to the tenant regarding the 10-Day Notices, due to service issues with all 10-Day Notices, all 10-Day Notices were cancelled during the hearing, which I will address in further detail in the analysis below.

In terms of the 1 Month Notice, the tenant confirmed having been served with the 1 Month Notice on May 9, 2022. The tenant did not file an application to dispute the 1 Month Notice. The effective vacancy dates listed on the 1 Month Notice was June 9, 2022, which I will address in further detail in the analysis below. The 1 Month Notice alleges the following causes:

- ☒ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause(s) portion of the 1 Month Notice state:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

In email was sent to every tenant on April 20th, 2022 that outlined a no smoking policy in the house or on the premises due our insurance not allowing any smoking on the premises. An email and signs were posted in the house. It has been witnessed that smoking has still occurred after this notice was sent. In the email it was indicated that anyone caught smoking will immediately be sent a 1 month notice to vacate without any warnings or forgiveness.

In addition there have been multiple late payments of rent where two separate 10d notices have been sent

It is of great regret we have to take this action but we need to hold up to what we have written in our email otherwise other tenants will question the validity of our actions or inactions.

Although smoking was discussed during the hearing, the tenant did not dispute that rent payments for January 2022, April 2022 and May 2022 were late, as indicated by the landlords. In addition, the tenant confirmed that since being served with the 1 Month Notice they have not paid any rent for June, July, August, September and October of 2022.

Based on this information alone, I find the 1 Month Notice was valid and the tenant's application was dismissed in full as a result, which I will now address below.

The tenant continues to occupy the rental unit.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Regarding the multiple 10-Day Notices before me, section 43(1) of the Regulation applies and states:

Other means of giving or serving documents

43 (1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy **to an email address provided as an address for service by the person.**
[emphasis added]

As all 10-Day Notices were served via email and the landlords confirmed that no emails were returned addressing any of the 10-Day Notices specifically, I dismiss all of the 10-

Day Notices due to service issues, as the tenant did not provide an email address to the landlord for service purposes as required by section 43(1) of the Regulation noted above.

As a result, I will now address the 1 Month Notice. There is no dispute that the tenant was served on May 9, 2022 with the 1 Month Notice. As the tenant failed to dispute the 1 Month Notice, section 47(5) of the Act applies and states:

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[emphasis added]

Section 53 of the Act automatically corrects the effective vacancy date of a 1 Month Notice. Although the effective vacancy date on the 1 Month Notice is listed as June 9, 2022, as rent is due on the first day of each month, I find the effective vacancy date automatically corrects to June 30, 2022.

The tenant confirmed the testimony of the landlords, which indicates the following rent remains owing as of the date of the hearing:

- **June 2022 rent owing of \$750**
- **July 2022 rent owing of \$1,250**
- **August 2022 rent owing of \$1,250**
- **September 2022 rent owing of \$1,250**
- **October 2022 rent owing of \$1,250**

TOTAL RENT OWING AS OF DATE OF HEARING = \$5,750

Section 26 of the Act requires that a tenant must pay rent regardless of whether the landlord complies with the Act, regulation or tenancy agreement. Given the above, I find the landlords have met the burden of proof and therefore, I grant the landlords **\$5,750** in unpaid rent and loss of rent as claimed.

Order of Possession – The effective vacancy date of the 1 Month Notice was automatically corrected to June 30, 2022 and the tenant continues to occupy the rental unit and admitted to not paying rent for the months claimed. Section 55(2)(b) of the Act applies and states:

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
[emphasis added]

Given that the tenant received the 1 Month Notice on May 9, 2022 and did not file an application to dispute the 1 Month Notice, I grant the landlords an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on June 30, 2022, which is the corrected effective vacancy date.

As the landlords' applications both had some merit, I grant the landlords the recovery of **\$200** for two filing fees of \$100 pursuant to section 72 of the Act.

As the tenant's application was dismissed, I do not grant the tenant their filing fee.

I find the landlords have established a total monetary claim of **\$5,950** described above. Pursuant to sections 38(4)(b) and 62(3) of the Act **I authorize** the landlords to retain the tenant's full security deposit of \$625, which has accrued \$0.00 in interest during the tenancy, in partial satisfaction of their monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the balance owing by the tenant to the landlords in the amount of **\$5,325**.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlords' applications are partially successful.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court. The tenancy ended June 30, 2022.

The landlords have established a total monetary claim of \$5,950 and the landlord has been authorized to offset that amount by retaining the tenant's entire \$625 security deposit. The landlords are granted a monetary order in the amount of \$5,325. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlords only for service on the tenant.

The tenant is cautioned that they can be held liable for all costs related to enforcing the order of possession and monetary order if they fail to comply once served by the landlord.

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: October 6, 2022

Residential Tenancy Branch