



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR-DR, OPR-DR
Tenant: RR, CNR-MT, RP

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- disputing a 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2022 (the "10 Day Notice") pursuant to section 46;
- more time to dispute the 10 Day Notice pursuant to section 66;
- an order to allow the Tenant to reduce rent by \$2,800.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order for the Landlord to make repairs to the rental unit pursuant to section 32.

This hearing also dealt with the Landlord's application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to section 55; and
- a Monetary Order of \$5,400.00 for unpaid rent pursuant to section 67.

The Landlord's application was originally made via direct request and had been adjourned to this hearing by a decision of an Adjudicator dated July 25, 2022 (the "Interim Decision"), due to issues relating to the service of the 10 Day Notice.

The Landlord, the Landlord's agents TZ and SJ, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Party

The Tenant's application listed TZ as a respondent. I have reviewed a copy of the tenancy agreement and find that TZ is not a landlord. Pursuant to section 64(3)(c) of the Act, I amended the Tenant's application to remove TZ as a party.

Preliminary Matter – Service of Dispute Resolution Materials

The Tenant acknowledged that she did not serve the Landlord with a copy of the notice of dispute resolution proceeding package and evidence for her application (collectively, the "Tenant's NDRP Package"). I find the Landlord was not served with the Tenant's NDRP Package in accordance with the Act or the Rules of Procedure. As such, I have excluded the Tenant's documentary and digital evidence submitted to the Residential Tenancy Branch (the "RTB") from consideration for the purposes of this hearing. I note records from the RTB indicate that the Landlord called on October 11, 2022 and was provided with information regarding the Tenant's application. Accordingly, I find the Landlord was sufficiently served with notice of the Tenant's application pursuant to section 71(2) of the Act.

TZ testified that a copy of the notice of dispute resolution proceeding package for the Landlord's application was given to the Tenant in person on July 28, 2022. TZ testified that an additional package with the Landlord's evidence was given to the Tenant in person on September 29, 2022. TZ confirmed that the Landlord's initial notice of dispute resolution proceeding package and evidence (collectively, the "Landlord's Initial NDRP Package") for the direct request application were sent to the Tenant via registered mail on July 7, 2022. The Landlord testified that another 10 day notice to end tenancy for unpaid rent dated August 2, 2022 (the "Second 10 Day Notice") was posted to the Tenant's door and included in the Landlord's evidence.

Records from the RTB indicate both parties were notified that the Landlord's application would be rescheduled to be heard at the same time as the Tenant's application.

The Tenant acknowledged that she received the Landlord's Initial NDRP Package, a copy of the Tenant's Interac payment records, and the Second 10 Day Notice posted to her door. The Tenant stated that her son JB did not receive any evidence from the Landlord.

Since the Landlord's claims in this application are the same as those stated in the Landlord's Initial NDRP Package, I find the Tenant to be sufficiently served with notice of this hearing and the Landlord's claims pursuant to section 71(2) of the Act. I further find the Tenant was served with the Landlord's evidence for this hearing in accordance with section 88 of the Act.

Preliminary Matter – Severing the Tenant's Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the 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.

(emphasis added)

The Tenant's application indicates that the Tenant is seeking a rent reduction due to issues relating to black mould, a bathroom faucet leak, and a roof leak. During the hearing, the Tenant confirmed that she did not incur any costs for repairs to the rental unit nor did she provide any invoices to the Landlord for reimbursement. Based on the Tenant's testimony, I find the Tenant's claims for a rent reduction and repairs to the rental unit to be unrelated to the Tenant's claim to dispute the 10 Day Notice.

Accordingly, and as discussed during the hearing, the Tenant's claims for a rent reduction and repairs to the rental unit are severed under the Rules of Procedure and dismissed with leave to re-apply.

Preliminary Matter – Amendment of Landlord's Application

The Landlord testified that the Tenant is still residing in the rental unit. The Landlord testified that since making his application, additional amounts have become owing by the Tenant, for a total of \$19,350.51. The Landlord confirmed that this amount includes \$150.51 for an unpaid water bill from April to July 2022. The Landlord confirmed that the balance (\$19,200.00) represents 5 months of rent at \$3,700.00 per month (for the period from June to the end of October 2022), plus a rent arrear of \$1,700.00 from May 2022, and less a payment of \$1,000.00 received from the Tenant on July 26, 2022.

Rule 4.2 of the Rules of Procedure states:

4.2 Amending an application at the hearing

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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Since the Tenant has not left the rental unit, I find the Tenant can reasonably anticipate the Landlord to seek additional rent and compensation for use of the rental unit that has become owing since the time the Landlord made his application. I further find that the Second 10 Day Notice served on the Tenant states that the Tenant failed to pay utilities in the amount of \$150.51, and as such I find an amendment to include this amount on the Landlord's application can be reasonably anticipated by the Tenant. Accordingly, I allow the Landlord to amend his application to increase the monetary claim sought from \$5,400.00 to \$19,350.51.

Issues to be Decided

1. Is the Tenant entitled to more time to dispute the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to compensation for unpaid rent, unpaid utilities, and use of the rental unit?

Background and Evidence

This tenancy commenced on April 1, 2022 and is for a fixed term ending on March 31, 2023. Rent is \$3,700.00 per month due on the first day of each month. The Tenant paid a security deposit of \$925.00 which is held by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

A copy of the 10 Day Notice is also submitted into evidence. The 10 Day Notice is dated June 2, 2022 with an effective date of June 13, 2022. The 10 Day Notice states that the Tenant failed to pay rent of \$5,400.00 due on June 1, 2022.

TZ testified that the 10 Day Notice was emailed to the Tenant, posted to the Tenant's door, and given in person to the Tenant's son JB at the rental unit on June 2, 2022. TZ testified that she had a witness, FP, who also signed the proof of service.

The Second 10 Day Notice submitted into evidence is dated August 2, 2022 and states that the Tenant failed to pay rent of \$12,800.00 due on August 1, 2022 and that the Tenant failed to pay utilities in the amount of \$150.51. The Landlord submitted a signed and witnessed proof of service form indicating that the Second 10 Day Notice was posted to the Tenant's door.

The Landlord testified that since moving into the property in April 2022, the Tenant never paid rent on time. The Landlord testified that the Tenant provided four post-dated cheques which bounced. The Landlord testified that the Tenant had been investigated by the Compliance and Enforcement Unit, which had determined that the Tenant repeatedly failed to pay rent in previous cases.

In response, the Tenant acknowledged that she received a copy of the 10 Day Notice from TZ via email "in the beginning of June". The Tenant testified that the email was not available anymore. The Tenant acknowledged that the 10 Day Notice was given to her son, but denied that she had received the 10 Day Notice in person.

The Tenant confirmed that she received the Second 10 Day Notice attached to her door in August 2022.

The Tenant stated that she was away on a "family emergency" in July 2022. The Tenant testified that she received a "Supreme Court" document from TZ and so she sent

\$1,000.00 immediately via e-transfer on July 26, 2022. The Tenant stated that she complained to the RTB that the document was falsified.

The Tenant stated she was concerned that rent would not be recorded by the Landlord. The Tenant stated that she had been in a car accident and lost her normal income. The Tenant stated that she was sometimes paid late by ICBC.

When questioned as to why the Tenant was seeking more time to dispute the 10 Day Notice, the Tenant stated that she wanted to make a claim for rent reduction.

The Tenant testified that there were issues relating to mould, a leaky faucet, and a leak in the bedroom roof.

The Tenant stated that she will be leaving the rental unit in the next few days.

Analysis

1. Is the Tenant entitled to more time to dispute the 10 Day Notice?

I accept TZ's testimony that copies of the 10 Day Notice were emailed to the Tenant, posted to the Tenant's door, and given in person to the Tenant's son JB at the rental unit on June 2, 2022. I find there is no evidence to suggest that JB was not residing at the rental unit at the time that he received the 10 Day Notice.

I find the Tenant acknowledged that she received a copy of the 10 Day Notice from TZ via email "in the beginning of June". I find the Tenant acknowledged that her son received a copy of the 10 Day Notice.

I note the Tenant had also stated on her application that she received the 10 Day Notice on July 11, 2022 via registered mail. I find the Tenant would likely have received a copy of the 10 Day Notice again as part of the Landlord's Initial NDRP Package. However, I do not find it credible that the Tenant received the 10 Day Notice for the first time on July 11, 2022. I find the Tenant did not give any testimony during the hearing to support this claim.

Based on the foregoing, I find the Tenant was sufficiently served with the 10 Day Notice on June 2, 2022, pursuant to section 71(2)(c) of the Act. I find that this resolves the concern of the Adjudicator in the Interim Decision.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment of rent within 5 days of receiving such notice. Therefore, I find the Tenant had until June 7, 2022 to dispute the 10 Day Notice. Records indicate that the Tenant made her application on July 18, 2022. I find the Tenant did not make her application within the time allowed under the Act for doing so.

Sections 66(1) and (3) of the Act state:

Director's orders: changing time limits

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

[...]

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

(emphasis added)

Since I have found that the effective date of the 10 Day Notice was June 13, 2022, and the Tenant did not make her application until July 18, 2022, I conclude that I do not have the authority to extend the time limit for the Tenant to make an application to dispute the 10 Day Notice.

Pursuant to section 66(3) of the Act, I dismiss the Tenant's claim for more time to dispute the 10 Day Notice without leave to re-apply. I decline to adjudicate the Tenant's claim to dispute the 10 Day Notice as it was made out of time.

2. Is the Landlord entitled to an Order of Possession?

I will now consider whether the Landlord is entitled to an Order of Possession pursuant to the Landlord's application.

Section 26(1) of the Act states that a tenant must pay rent when due, 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Sections 46(4) and 46(5) of the Act state that if a tenant who has received 10 day notice for unpaid rent does not pay the rent or make an application for dispute resolution within 5 days of receiving the notice, 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 by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

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; [...]

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
- (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the 10 Day Notice was sufficiently served on June 2, 2022, the time for disputing the 10 Day Notice expired on June 7, 2022, and the Tenant did not pay the unpaid rent or make an application for dispute resolution by that date. I find that since the 10 Day Notice was served, the Landlord has only received one partial payment of \$1,000.00 from the Tenant on July 26, 2022. I find there is no evidence to suggest that the Tenant had a legal right under the Act to withhold payment of rent.

Based on the foregoing, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or June 13, 2022. I further find that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the effective date stated on the 10 Day Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

3. Is the Landlord entitled to compensation for unpaid rent, unpaid utilities, and use of the rental unit?

a. Unpaid Rent

I find the Landlord is entitled to compensation for unpaid rent up to and including June 13, 2022 under section 55(4)(b) of the Act.

I accept the Landlord's evidence that the Tenant owes \$1,700.00 in unpaid rent from May 2022. I find the Tenant acknowledged that she owed rent for May 2022 when she stated that her payment in July 2022 would have been for May, not June. I note that although the Tenant claimed the July payment would have been "the rest of May", I find the Interac payment records submitted into evidence by the Landlord show that the Tenant only paid \$1,000.00 on May 6, 2022 and \$1,000.00 on May 21, 2022, leaving an unpaid balance of \$1,700.00.

Pursuant to section 55(4)(b) of the Act, I order the Tenant to pay the Landlord **\$2,303.33** in unpaid rent to June 13, 2022 (calculated as \$1,700.00 for May 2022 + \$3,700.00 × 13/30 days for June 1, 2022 to June 13, 2022 - \$1,000.00 paid on July 26, 2022).

b. Unpaid Utilities

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that clause 3(b) on page 2 of the parties' tenancy agreement indicates that the cost of water is not included in the rent. I accept the Landlord's undisputed testimony that the water bill for April to July 2022 is \$150.51. I find that the Landlord is entitled to recover this amount from the Tenant. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord **\$150.51** for the water bill.

c. Compensation for Use of Rental Unit

As mentioned above, I have found that the Tenant is conclusively presumed to have accepted that the tenancy ended on June 13, 2022. I find that the Tenant is still occupying the rental unit as of the date of this hearing.

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. Section 57(1) of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Based on parties' testimonies, I find that the Tenant is an overholding tenant under section 57(1) of the Act, and that the Landlord is entitled to compensation for the Tenant's use of the rental unit up to and including the date of the hearing. I note the Landlord is seeking compensation to the end of October 2022, but it is uncertain whether the Tenant will continue to occupy the rental unit to the end of the month.

I find that the Landlord is entitled to receive compensation of \$3,700.00 per month from the Tenant for use and occupancy of the rental unit.

Pursuant to section 57 of the Act, I order the Tenant to pay the Landlord **\$15,345.05** as compensation for overholding from June 14, 2022 to October 18, 2022 (calculated as $\$3,700.00 \times 17/30$ days for June 14, 2022 to June 30, 2022 + $\$3,700.00 \times 3$ months for July, August, and September 2022 + $\$3,700.00 \times 18/31$ days for October 1, 2022 to October 18, 2022).

d. Summary

Based on the foregoing, I find the Landlord is entitled to a total amount of **\$17,798.89** from the Tenant.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$925.00 security deposit in partial satisfaction of the total amount awarded to the Landlord.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent for May 2022	\$1,700.00
Unpaid Rent for June 1, 2022 to June 13, 2022 ($\$3,700.00 \times 13 / 30$ days)	\$1,603.33
Less Payment Received from Tenant on July 26, 2022	- \$1,000.00
Unpaid Utilities (Water Bill for April to July 2022)	\$150.51
Compensation for Overholding from June 14, 2022 to October 18, 2022 ($\$3,700.00 \times 17/30$ days + $\$3,700.00 \times 3$ months + $\$3,700.00 \times 18/31$)	\$15,345.05
Subtotal	\$17,798.89
Less Security Deposit	- \$925.00
Total Monetary Order for Landlord	\$16,873.89

Conclusion

The Tenant's claim for more time dispute the 10 Day Notice is dismissed without leave to re-apply. I decline to adjudicate the Tenant's claim to dispute the 10 Day Notice as it was made out of time. The remaining claims on the Tenant's application are severed

per the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

The Landlord's claim for an Order of Possession is successful. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is entitled to compensation of \$17,798.89 from the Tenant.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's \$925.00 security deposit in partial satisfaction of the total amount awarded in this application.

Pursuant to sections 55, 57, and 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$16,873.89** for the balance awarded. 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: October 19, 2022

Residential Tenancy Branch