



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310081888: CNR-MT, RPP
File #310082499: OPR-DR, MNR-DR

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on August 4, 2022 (the “10-Day Notice”);
- an order pursuant to s. 66 for more time to dispute the 10-Day Notice; and
- an order pursuant to ss. 65 and 67 for return of personal property.

The Landlords seek the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice; and
- an order pursuant to s. 67 for unpaid rent.

The Landlords’ application was filed as a direct request but was adjourned to a participatory hearing due to the Tenant’s application.

S.V. appeared as the Landlord. The Tenant did not attend, nor did some one attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notices of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that their application and evidence was served on the Tenant by posting it to his door on August 31, 2022. Based on the Landlord's undisputed testimony, I find that the Landlords served their application and evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlords' application materials on September 3, 2022.

Preliminary Issue – Tenant's Claim

Rule 6.6 of the Rules of Procedure sets out that applicants bear the burden of proving their claims, except in circumstances where the burden shifts to respondent landlords when a tenant applies to cancel a notice to end tenancy. In this instance, the Tenant has applied for relief in which he bears the onus of proving the claim (return of personal property) and the respondent Landlords bear the onus (cancelling the 10-Day Notice).

As the Tenant did not attend the hearing for their own application and provide submissions, I find that they have failed to prove their claim with respect to the return of personal property. This claim is dismissed without leave to reapply.

As the Landlord bears the burden of proving that the 10-Day Notice was properly issued, I obtained submissions on this issue and will consider the Tenant's application with respect to this claim.

Preliminary Issue – Style of Cause

The two Notices of Dispute Resolution before me have different parties named as the Landlord. The Tenant names one Landlord and has different spelling from the Landlords' application, which names two Landlords.

Policy Guideline #43 provides guidance with respect to the naming of parties and indicates that parties should be named using their legal names. The Landlord confirmed there are two Landlords and confirmed the correct legal spelling as set out in their application. Accordingly, I amend the Tenant's application to correct the naming of the Landlords such that it corresponds with the spelling in the Landlords' application.

Issues to be Decided

- 1) Is the Tenant entitled to more time to cancel the 10-Day Notice?
- 2) Should the 10-Day Notice be cancelled?

- 3) Are the Landlords entitled to an order of possession?
- 4) Are the Landlords entitled to an order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on June 1, 2021.
- Monthly rent of \$900.00 is payable in two instalments. The first on the 1st of each month and the second on the 15th of each month.
- The Landlord holds a security deposit of \$250.00 in trust for the Tenant.

The Landlord testified that the 10-Day Notice was personally served on the Tenant on August 8, 2022. A copy of the 10-Day Notice was put into evidence listing that \$4,300.00 of rent had not been paid as of August 2022. The Landlord testified that the Tenant had not paid the arrears as per the 10-Day Notice.

At the hearing, the Landlord testified that the Tenant paid \$200.00 for rent in April 2022 but had not paid the balance and had not paid rent at all for May, June, July, and August 2022. The Landlord testified that rent had not been paid in full for September or October 2022, though indicates that the Tenant had made some payments on rent over that period, comprising of money left at the Landlord's backdoor totalling \$500.00. The Landlord provided no accounting with respect to rent receipts in September or October 2022. The Landlord testified that total arrears as at the date of the hearing were \$4,400.00.

The Landlord's evidence includes a monetary order worksheet, stating that no rent was paid in May, June, or July 2022, that \$200.00 was paid in April 2022, and that \$300.00 had been paid by the Tenant on August 15, 2022. As per the monetary order worksheet, \$4,000.00 of rent was owed by the Tenant. This is the amount claimed for by the Landlords in their application.

The Landlord testified that the Tenant continues to reside within the rental unit.

Analysis

The Tenant applies to cancel the 10-Day Notice and for more time to do so. The Landlords seek an order of possession and an order for unpaid rent.

I accept the Landlord's undisputed evidence that the 10-Day Notice was personally served on the Tenant on August 8, 2022. I find that that the 10-Day Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on August 8, 2022.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date is incorrect based on its receipt on August 8, 2022, though this is corrected automatically to August 18, 2022 as per s. 53 of the *Act*.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to section 46(4) of the *Act*, a tenant has five days after receipt of a notice to either pay rent in full or to make an application to dispute the notice to end tenancy.

The Tenant seeks more time to dispute the notice. Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed.

Rule 2.6 of the Rules of Procedure sets out when an application is considered to have been made and states the following:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

Upon review of the information on file, the Tenant submitted his application on August 13, 2022 and paid his filing fee on August 15, 2022. As per Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application on August 15, 2022, which is when the application was submitted and the filing fee was paid.

The Tenant did not attend the hearing for their own application and provided no submissions on why he should be granted more time. When a party requests more time under s. 66, the party making the request bears the burden of showing that exceptional circumstances are present. In this instance, I find that the Tenant has failed to demonstrate any exceptional circumstances are present as they did not attend the hearing to make submissions. The application for more time is dismissed.

As the Tenant has failed to demonstrate exceptional circumstances are present, I find that the Tenant failed to file his application within the 5-days permitted to him under s. 46(4) of the *Act*. Further, I accept the undisputed evidence of the Landlord and further find that the Tenant failed to pay the arrears as listed in the 10-Day Notice within 5 days of receiving the notice.

Accordingly, I find that the conclusive presumption under s. 46(5) of the *Act* applies such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit by the effective date of the notice, being August 18, 2022. As the conclusive presumption under s. 46(5) applies, I dismiss the Tenant's application to cancel the 10-Day Notice.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession under s. 55(1) of the *Act*.

To be clear, even had the Tenant filed in time and the conclusive presumption not applied, I would have still upheld the 10-Day Notice. I am satisfied based on the Landlord's undisputed testimony that rent had not been paid as per the tenancy agreement nor had the arrears been paid within 5 days of the Tenant receiving the notice.

The Landlords make an application for unpaid rent. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I have little difficulty finding that the Tenant breached their obligation to pay rent under the tenancy agreement, which is also in breach of their obligation to pay rent as per s. 26 of the *Act*. This breach gives rise to the claim for unpaid rent.

With respect to quantifying the claim, however, the Landlords have been inconsistent in their evidence. The Landlord testified that she had received some rent payments in September and/or October 2022, though was unclear the extent of these payments, only confirming \$500.00 had been paid. The Landlord's application claims total arrears from April to August 2022 of \$4,000.00, stating the following:

The tenant has failed to pay full rent in April, May, June, July, and August. Only partial payments were made in April and August with the other three months having no rent paid.

The monetary order worksheet supports the \$4,000.00 amount, indicating that \$300.00 had been paid by the Tenant on August 15, 2022. At the hearing, however, the Landlord did not testify that a \$300.00 payment had been received in August 2022 at all. Based on the submissions at the hearing, the Tenant has rent arrears totalling \$4,300.00. However, the Landlord testified that \$4,400.00 was owed as at the date of the hearing, presumably including the months of September and October 2022, which does not correspond with the \$500.00 worth of payments the Landlord asserted had been made in those two months.

All this is to say that I have contradictory evidence on the extent of rent that is owed by the Tenant. The Landlord's evidence and submissions support that \$200.00 was paid in April 2022 and that no rent was paid at all in May, June, and July 2022, which I am satisfied the Landlord has proven this portion of their claim.

However, the Landlords' evidence has been inconsistent with respect to rent owed in August 2022. I am unable to make a finding with respect to what amount, if any, rent is owed for August 2022. It is the Landlords' claim, they bear the burden of proving it. I find that the Landlord has failed to establish what rent was owed in August 2022. Accordingly, this aspect of the claim is dismissed without leave to reapply.

Finally, the Landlord claimed rent for September and October 2022 at the hearing. However, the Landlord did not file a claim for these amounts, nor did they file an amendment or request an amendment for these amounts at the hearing. As no amendment was filed or requested, I find that the issue of unpaid rent for September and October 2022 are not squarely before me as they have not been claimed in the application. I make no orders or findings with respect to these amounts. The Landlords are free to file a claim seeking these amounts should they choose to do so.

Accordingly, I find that the Landlords have established a monetary claim for unpaid rent totalling \$3,400.00 (\$700.00 April 2022 + \$900.00 May 2022 + \$900.00 June 2022 + \$900.00 July 2022).

Conclusion

The Tenant's claim for return of personal property is dismissed without leave to reapply as the Tenant failed to attend the hearing to discharge his evidentiary burden.

I dismiss the Tenant's application for more time to dispute the 10-Day Notice. The Landlords are entitled to an order of possession. I order that the Tenant provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

I find that the Landlords have established a monetary claim for unpaid rent totalling \$3,400.00 comprising the period from April to July 2022.

The Landlords have failed to quantify their claim with respect to rent owed in August 2022, which is dismissed without leave to reapply. The unpaid rent from September and

October 2022 are not specifically pled. As such, I make no orders or findings with respect to unpaid rent for September or October 2022 and the Landlords are at liberty to apply seeking compensation for those months.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlords retain the \$250.00 security deposit in partial satisfaction of the total arrears in unpaid rent.

Pursuant to ss. 67 and 72, I order that the Tenant pay **\$3,150.00** to the Landlords (\$3,400.00 - \$250.00).

It is the Landlords' obligation to serve the orders on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court. If the Tenant does not comply with the monetary order, it may be filed by the Landlords with 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 04, 2022

Residential Tenancy Branch