



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

First Application: CNC, MNDCT, OLC, RP, FFT

Second Application: CNR, MNRT, RR, OLC, MNDCT, RP, FFT

On May 22, 2022, the Tenants (hereinafter, the “Tenant”) filed their Application at the Residential Tenancy Branch:

- a. to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- b. for repairs made to the rental unit;
- c. for compensation for monetary loss or other money owed;
- d. for the Landlord’s compliance with the legislation and/or the tenancy agreement;
- e. for reimbursement of the Application filing fee.

On July 7, 2022, they submitted a second Application:

- f. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”);
- g. for the Landlord’s compliance with the legislation and/or the tenancy agreement;
- h. for compensation for monetary loss or other money owed;
- i. for repairs made to the rental unit, after contacting the Landlord in writing;
- j. for a reduction in rent for repairs, services or facilities agreed upon but not provided;
- k. for compensation for the cost of emergency repairs borne by them;
- l. for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 3, 2022. Both parties attended the teleconference hearing.

Preliminary Matter – evidence disclosure

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties' submission and provision of evidence to the Branch and each other. This sets timelines for doing so.

At the outset of this hearing, the Tenant advised they had additional video and audio that they had not submitted as evidence for this hearing. At one point, the Tenant in the hearing played the audio in the hearing; however, that audio was not clear and the Tenant supplemented that with their description of what was heard.

I allowed for no provision of late evidence in this hearing, and the record is confined to what the Tenant and Landlord provided to each other in advance which they both confirmed as received.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the two Notices to End Tenancy issued by the Landlord. These are: a. the One-Month Notice, and f. the 10-Day Notice.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes “related issues”, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . 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.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the other issues listed above, b. through d., and g. through k. listed above. By Rule 2.3, the other issues are unrelated, and I amend the Tenant's Application to exclude these matters. The Tenant has leave to reapply on these other grounds. This means they may file a new and separate application to address the other issues, and this does not preclude proper consideration of these issues by another arbitrator.

Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice?

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for either of their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion, and the outcome of this hearing, are set out in this decision.

The Tenant submitted a copy of the tenancy agreement for the rental unit. The tenancy started on April 1, 2022, and the Landlord emphasized the tenancy was on a month-to-month basis. The rent amount was \$1,995 was payable on the first of each month.

The Landlord issued the 10-Day Notice on July 2, 2022. A copy of this appears in the Landlord's evidence, and the first page of the document appears in the Tenant's evidence.

The 10-Day Notice gives the end-of-tenancy date, on which the Tenant must move out, as July 12, 2022. Page 2 of the document shows the Landlord's indication that the Tenant failed to pay rent in the amount of \$1,995 on July 1, 2022.

The Landlord provided a copy of the "statement of accounts" for the rental unit, showing the Tenant then paid \$1,250 of the rent owing on July 4, 2022. In the hearing, the Landlord stated they received full rent for August, the no rent for September, and \$1,800 on October 2.

The Tenant confirmed they withheld a rent amount from the month of July 2022. This is because the Landlord lost their temper (as heard on the audio recording the Tenant played) and threw the Tenant's laptop computer. The Tenant withheld \$300 from that month's rent because of that damage. Because of the ongoing issue with the non-functioning toilet, the Tenant withheld a further \$150, as they stated in the hearing. The Tenant also listed out-of-pocket expenses for money they paid to a plumber, for \$250. This total is \$700.

The Tenant in the hearing provided that they have a video of them counting out the correct amount of rent for the month of September. In the video they can be seen putting the cash into an envelope, then placing that envelope under the Landlord's own unit door in the building.

The video, as verified by the Tenant during the hearing, was dated August 24, 2022. In response to this, the Landlord maintained they did not receive rent for September 2022.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a 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.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “if rent is unpaid on any day after the day it is due.” A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice to the Tenant on July 2, 2022. The Tenant verified they made a partial payment of the July rent to the Landlord on July 4, 2022.

Though the Tenant indicated they made a payment to the Landlord on July 4, and had the right to do so, there is no record that they paid the complete amount for July rent. The Landlord provided a ledger that showed \$745 rent amount owing. Given the Tenant could not name the correct amounts they withheld in conjunction with the reasons, I find the Landlord is credible on this account of the amount paid by the Tenant.

I conclude the Tenant did not pay the full rent amount, and they verified they only did so for what they feel was a correct amount due to repairs and damage to their personal property. I find the tenancy agreement – provided by the Tenant in evidence for this hearing and therefore well within the scope of their knowledge – was explicit on the full amount of rent payable by the Tenant each month. Further, there is no record provided by the Tenant that they attempted to pay the full amount and were prevented or otherwise blocked from doing so.

The *Act* s. 26 applies, and the Tenant had no authorization in the form of an order from the Residential Tenancy Branch order to pay a reduced amount of rent. Nor did they have authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

In line with s. 55(1.1) of the *Act*, I grant the Landlord a monetary order for \$745. I find the Landlord credible on their accounting.

The Tenant did not present evidence to show they made the rent payment for the month of September. Evidence they have on video was not provided for this hearing, and I did not allow the Tenant to provide this evidence at the conclusion of this hearing. With no evidence of payment, I accept the Landlord's account that they received no rent for September 2022. I add that full amount of \$1,995 to the amount owing.

I find the Landlord was not completely sure of the amount paid by the Tenant for October; therefore, I omit any recompense for rent owing for that month from an award to the Landlord.

The Tenant was obligated to pay for rent in line with the tenancy agreement and had no right to reduce the amount unilaterally. This was a breach of the tenancy agreement, and s. 46(1) applies in this scenario. I dismiss the Tenant's Application for cancellation of the 10-Day Notice for this reason, and the tenancy is ending.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent amount of \$745. By s. 67 of the *Act*, I grant the Landlord a further award of \$1,995 for September rent.

The validity of the separate One-Month Notice issued by the Landlord on May 14, 2022 is not at issue. I dismiss this part of the Tenant's Application because the tenancy is ending for the reason of unpaid rent.

The Tenant was unsuccessful on both Applications; therefore, I make no award for reimbursement of the Application filing fees.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I grant an Order of Possession to the Landlord, effective TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$2,740, pursuant to s. 55(1.1) and s. 67 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: October 3, 2022

Residential Tenancy Branch