



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM ALLIANCE REAL ESTATE GROUP LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, RP

Introduction

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

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 20, 2022 ("10 Day Notice");
- an Order to reduce the rent by \$1,800.00 for repairs, services or facilities agreed upon, but not provided; and
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;

An agent for the Landlord, T.J. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord's Agent.

The Tenant was provided with a copy of the Residential Tenancy Branch ("RTB") Notice of a Dispute Resolution Hearing documents on October 6, 2022; however, the Tenant did not attend the teleconference hearing scheduled for November 24, 2022, at 11:00 a.m. (Pacific Time). The phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's Agent, who indicated that he was ready to proceed.

Rule 7.1 of the RTB Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord/Tenant and I attended the hearing on time and were ready to

proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at a.m. on , 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 17 minutes; however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application wholly, without leave to reapply**.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application, and the Agent provided his in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Following the ten-minute waiting period, the Tenant's Application was **dismissed without leave to reapply** as the Tenant failed to attend the hearing to present the merits of her Application or at the very least cancel her scheduled hearing in advance of the hearing. The Agent did attend the hearing and was ready to proceed.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Is the 10 Day Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Agent confirmed the details of the Parties' tenancy, saying that the periodic tenancy began on December 1, 2020, with a monthly rent of \$600.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit, and he said that the Landlord still holds the security deposit in full.

The Agent also confirmed the details of the 10 Day Notice that the Tenant submitted. The 10 Day Notice was signed and dated September 20, 2022, it has the rental unit address, it was served by attaching a copy to the door of the rental unit on September 20, 2022, with an effective vacancy date of October 4, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$3,600.00 in rent when it was due to the Landlord on September 1, 2022.

In the hearing, the Agent said that the Landlord seeks an order of possession and monetary order for this tenancy, because the Tenant failed to pay her rent in full.

The Agent provided background to this situation, saying there was a fire that was started by the Tenant, as a result of a candle she had lit. The Agent said that the sprinklers caused approximately \$30,000 in damage.

I asked the Agent in which months the Tenant had failed to pay rent, such that it amounted to \$3,600.00 set out in the 10 Day Notice. The Agent explained that the Tenant's rent is paid by a government Ministry. He said:

When we issued the eviction notice, her payments went to the previous owner's representative - same owner - but we took over as the Landlord's representative in March. The government – we sent notices to the government - but they kept sending the payments to the previous owner's representative. The money still went to the right spot.

We're not asking she pay the balance of the prior months: March, April, May and June were not paid, but subsequently, she's provided the government payments for March through June. As a result, the amount outstanding is \$1,800.00, which is three months rent to the date on which the eviction notice was served.

I would like to ask for October and November, which she has not paid, and it totals \$3,000.00 of actual rent owing, in light of the evidence provided, which shows that the March through June rent was paid by the government.

The Agent confirmed that the Landlord seeks rent payments of \$600.00 each for July, August, September, October, and November 2022, totalling \$3,000.00.

The Agent said that the Tenant was still living there after the fire, as he said he saw her at the building when he was there. He said that her unit was not damaged to the point of being uninhabitable. The Agent described the damage in the unit, as follows:

There is a couple of pictures in the evidence of some smoke damage to the wall, and they put a hole in roof, so there was damage there. In the corner of her room where the fire occurred there was heat damage on the walls, as well.

I asked the Landlord if he knew why the Tenant failed to pay her rent, and he said:

That part isn't 100% clear; my guess was because there was damage, she thought she wouldn't have to pay rent. We understand - we're not trying to be mean - but the rent was due and it wasn't paid.

Analysis

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

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on September 23, 2022, three days after it was sent to her by registered mail.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, 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. In the hearing, the Landlord said that he was owed \$3,000.00 in unpaid rent as of November 1, 2022. There is no evidence before me that the Tenant had a right to deduct anything from her rent owed to the Landlord.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$3,600.00 is incorrect, as it was based on the outstanding rent amount owing at the time the Notice was served. The Landlord advised that the Tenant only owes \$3,000.00, as of the date of the hearing.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$3,600.00 to \$3,000.00.

I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$3,600.00 in rent that was owed as of September 1, 2022. As noted above, **the Tenant's Application is dismissed wholly without leave to reapply.**

Further, I award the Landlord an **Order of Possession** pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent since June 2022, the Order of Possession will be **effective two days after service** of the Order on the Tenant.

Based on the evidence before me, and pursuant to section 67 of the Act, I grant the Landlord a **Monetary Order** from the Tenant of **\$3,000.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant is unsuccessful in her Application, as she failed to attend the hearing to present the merits of her case. Further, the Landlord fulfilled his burden of proof in establishing the validity of the 10 Day Notice, and therefore, he is eligible for an order of possession of the rental unit. The Landlord also provided sufficient evidence to prove on a balance of probabilities that the Tenant owes him \$3,000.00 in unpaid rent.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 46 and 67 of the Act, I grant the Landlord a **Monetary Order** from the Tenant for **\$3,000.00**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: November 25, 2022

Residential Tenancy Branch