Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1093408 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR
For the landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46.

The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under the Notice; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 11:32 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by property managers RM and PS attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that RM, PS and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

RM mailed the notice of hearing and the evidence (the landlord's materials) on October 04, 2022 to the rental unit's address. The tracking number is recorded on the cover page of this decision.

Based on the RM's convincing testimony and the tracking number, I find that RM served the landlord's materials in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 09, 2022, in accordance with section 90 (a) of the Act.

RM confirmed receipt of the tenant's notice of hearing (the tenant's materials) and that he had enough time to review it.

Based on the RM's testimony, I find the tenant served the tenant's materials in accordance with section 89(1) of the Act.

Preliminary Issue – Tenant's application

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

> **Rule 7 – During the hearing**
> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
> **7.3 Consequences of not attending the hearing**
> 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 re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

I note that sections 55(1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Relying on M.B.B. v. Affordable Housing Charitable Association, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

> [27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Preliminary Issue – Landlord

The tenant's application indicates the landlord is Lighthouse. The landlord's application indicates the landlord is RM.

The tenancy agreement indicates the landlord is the numbered company 1093408 BC LTD (the numbered company). RM affirmed that RA is the owner of the numbered company and that Lighthouse Realty Ltd (Lighthouse) is the real estate company that represents the numbered company and manages the rental unit.

Based on the tenancy agreement, I find the landlord is the numbered company, which is owned by RA and represented by Lighthouse. Based on the testimony provided by RM, I find that RM and PS are agents representing Lighthouse, which represents the landlord. Hereinafter, I will refer to RM as "the landlord".

Pursuant to section 64(3)(c) of the Act, I amended both applications to indicate that the landlord is the numbered company.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for $2,392.72 in unpaid rent to include an additional $2,003.50 for the unpaid rent and late payment fee for October and November 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent and late payment fee to $4,396.25.

Issues to be Decided

Is the tenant entitled to an order to cancel the Notice?

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party: "Evidence must be presented by the party who submitted it, or by the party's agent."

The landlord affirmed the tenancy started on January 07, 2020. Monthly rent is $964.25, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $450.00, a key deposit of $25.00 and a fob deposit of $25.00. The landlord currently holds in trust the deposits in the amount of $500.00. The tenancy agreement was submitted into evidence. It states: "any payment over one day in arrears are subject to a $25.00 service charge" (page 5, paragraph Z).

The landlord attached the August 03, 2022 Notice to the rental unit's front door on August 03, 2022. The landlord submitted two copies of the second page of the notice indicating the tenant failed to pay rent due on August 01, 2022. One of the copies does not indicate how much is the amount of unpaid rent. The other copy indicates the tenant did not pay $2,392.75.

The landlord submitted into evidence a proof of service indicating the landlord attached the Notice to the tenant's front door on August 03, 2022 at 7:00 PM.

The landlord affirmed she is not sure if the Notice attached to the rental unit's door indicates the amount of unpaid rent.

The landlord submitted a notice of rent increase dated October 02, 2021 indicating that rent increased to $964.25 on January 01, 2022.

The landlord submitted into evidence a ledger indicating the tenant had rental arrears of $439.25 in July 2022 and that the tenant did not pay rent in August and September 2022. The landlord served the Notice without the ledger.

The landlord affirmed the tenant paid $525.00 for July 2022 rent and did not pay rent in August, September, October and November 2022. The current arrears are $439.25 for the balance of July 2022 rent, $964.25 and the late fee of $25.00 per month for August, September, October and November 2022. The total rental arrears are $4,396.25.

The tenant's application states:

> I am disputing the 10 day notice because I had an agreed upon agreement with my landlord through the building manager / property management person hired to manage the building does not live on site or in [redacted for privacy] as far as I know. But I informed her of my situation and gave her dated I could pay some it not all by, as well a guaranteed date of when I it would be paid in full which was only a two week wait in between those dates.

The landlord submitted into evidence a monetary order worksheet dated September 8, 2022 indicating the tenant did not pay rent and the late fee in the amount of $2,392.75.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Order of possession

Based on the landlord's convincing testimony and the proof of service, I find the landlord attached the Notice to the tenant's front door on August 03, 2022. Per section 90(c) of the Act, I deem the tenant received the Notice on August 06, 2022.

Section 46(2) of the Act state:

> (2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 46(2) of the Act is mandatory, and I do not have discretion as to its application.

Section 52 of the Act states:

> **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.
>
> (emphasis added)

Based on the landlord's vague testimony, I find the landlord failed to prove, on a balance of probabilities, that the landlord served the Notice indicating the amount of unpaid rent.

The Notice must contain information to clearly explain the grounds for ending the tenancy. The landlord did not serve the Notice with a ledger indicating the amount of unpaid rent or stating how much is the unpaid rent.

As such, I find the Notice does not comply with section 52(d) of the Act, it is not effective and I cannot issue an order of possession. I cancel the Notice.

Unpaid rent

Based on the convincing testimony offered by the landlord, the tenancy agreement and the monetary order worksheet, I find the tenant must pay monthly rent in the amount of $964.25 on the first day of the month and the tenant did not pay the balance of July 2022 rent in the amount of $439.25, August, September, October and November 2022 rent in the monthly amount of $964.25 and the late payment fee in the monthly amount of $25.00.

Section 26(1) 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 this Act.

Pursuant to section 26(1) of the Act, I award the landlord $4,396.25.

Filing fee and deposit

As the landlord was successful in his application, I find that the landlord is entitled to recover the $100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the $500.00 deposits in partial satisfaction of the monetary award.

In summary:

Item	Amount $
Balance of July 2022 rent	439.25
Unpaid rent for August, September, October and November 2022 and late fee (964.25+25.00 x 4 months)	3,957.00
Filing fee	100.00
Subtotal	4,496.25
Deposits (subtract)	500.00
Total:	**3,996.25**

Conclusion

The Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

Per sections 26 and 72 of the Act, I authorize the numbered company to retain the $500.00 deposits and award the numbered company $3,996.25. The numbered company 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, 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: November 10, 2022

Residential Tenancy Branch