



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant, the landlord, the landlord's wife and co-owner (the "co-owner") of the subject rental property attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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."

Both parties confirmed their email addresses for service of this Decision.

Section 55(1) of the *Act* states that if either of the landlord's notices to end tenancy comply with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application to cancel

either notice to end tenancy or upholds either notice to end tenancy, the director must grant the landlord an order of possession.

Section 55(1.1) of the *Act* states that if the tenant's application to cancel the 10 Day Notice is dismissed or the 10 Day Notice is upheld, the landlord is entitled to a Monetary Order for unpaid rent.

Preliminary Issue- Amendment

The landlord testified that his last name was spelt incorrectly in the tenant's application for dispute resolution. In the hearing the landlord testified to the correct spelling of his last name. I note that the last name listed on the notices to end tenancy for which this application for dispute resolution is based, matched the spelling provided in the hearing by the landlord. I accept the landlord's testimony regarding the spelling of his name.

Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to correctly spell the landlord's last name.

Both parties agree that the address listed on this application for dispute resolution is incomplete. In the hearing both parties agreed on the correct address of the subject rental property. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to state the full address of the subject rental property.

Preliminary Issue- Service

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution. The landlord testified that this was received on August 9, 2022. The tenant did not know the date of service. I find that the above package was served on the landlord in accordance with section 89 of the *Act*.

The only evidence submitted by the tenant for consideration is this dispute is a copy of the One Month Notice and the 10 Day Notice (the "Notices"). The co-owner testified that the Notices were both served on the tenant via posting on July 3, 2022. The tenant testified that he received the Notices but did not recall on what date but it may have been July 3, 2022. I find that the tenant was deemed served with the Notices on July 6, 2022, three days after their posting, in accordance with sections 88 and 90 of the *Act*.

Both parties agree that the tenant was personally served the landlord's evidence on November 21, 2022. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the *Act*.

In the landlord's written submissions, the landlord states that some text messages entered into evidence were not provided to the tenant for safety reasons.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I exclude from consideration the evidence not served on the tenant in accordance with Rule 3.14 of the *Act*.

Preliminary Issue- Full Particulars

The tenant left the field for the particulars of his claim for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement blank.

Section 59(2)(b) of the *Act* states:

59(2)(b) An application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

Section 59(5)(c) of the *Act* states:

59(5)(c) The director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

I find that the tenant's application for dispute resolution does not provide the full particulars of the tenant's claim for an Order for the landlord to comply with the *Act*,

regulation or tenancy agreement as it is unclear what section of the *Act*, regulation or tenancy agreement the tenant is seeking the landlord to comply with.

I find that it would be procedurally unfair to the landlord to accept the tenant's application for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement as the landlord has not been provided with a full opportunity to respond to the tenant's claims because the tenant has not provided the particulars of that claim.

Pursuant to section 59(5)(c) of the *Act*, I refuse to accept the tenant's application for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement.

Preliminary Issue- Conduct in Hearing

During the hearing the tenant became angry and was not able to follow instructions to remain silent while the landlord and co-owner presented their evidence and made submissions. To ensure that both parties had a full opportunity to be heard, the tenant was muted during the landlord's submissions. The tenant was unmuted after the landlord and co-owner finished their submissions and was provided with a full opportunity to respond to the testimony of the landlord and co-owner and to make submissions.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice, pursuant to section 46 of the *Act*?
3. Is the landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?
4. Is the landlord entitled to a Monetary Order pursuant to section 55(1.1) of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. A verbal tenancy agreement was entered into by the parties. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord.

The One Month Notice was entered into evidence, is signed by the landlord, is dated June 15, 2022, gives the address of the rental unit, states that the effective date of the notice is July 31, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.

The Details of Cause section of the Notice states:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

- Another 2 occupants moved into the unit, however unit rented to one person only.
- tenant repeatedly late with payments since last 6 months, with last 2 months missing the payments.
- tenant making threats towards other tenants and Landlord. (Owner's wife called multiple times due to violence and property damages, personal threats etc. during last 6 months).

Both parties agree that the subject rental property is a two-bedroom suite. The co-owner testified that the tenant moved his son into the subject rental property and that his wife is frequently over and that this is too many occupants.

The tenant testified that the landlord knew that his son was moving in when he agreed to rent the subject rental property to him. The tenant testified that he rented a two bedroom so that his son could live with him. The tenant testified that his wife is allowed to visit.

The co-owner testified that the tenant was late paying rent in December 2021, February 2022, March 2022 and May 2022. The tenant agreed to the above testimony. The tenant testified that while he was late paying rent for the above months, he always paid the landlord back.

The co-owner testified that the tenant has made lots of threats to the upstairs tenant and the landlord.

The landlord entered into evidence the following text messages:

- Undated:
 - Tenant: My clubs are ready you better call them [name of upstairs tenant redacted] first
 - Landlord: I don't understand your clubs is ready going for golfing?
 - Then I will find [name of upstairs tenant redacted] you take his side I owe him fuck all I want my hydro money minus his 72 I want my 230 or he'll will come up-stairs call him I will cut off the breaker and mask up it will be scary trust me.
- June 1:
 - Tenant: Fuck you he started telling me u owe money he owes we can't u see this fuckin drunk bullshit he drank a Mikey of booze right in front of me and then says I owe him 72 dollars what about my money about stick up for me show some balls you want me to move cause of there bullshit I will make like hell for you too then
- Undated:
 - Tenant: You know they owe me you know [name of upstairs tenant redacted] owes me do not play stupid and you heard me today when [name of upstairs tenant redacted] said I owe him fuck I want my money or I will break shit you call them I do not want to see them or I will hurt them I had enough so so call them now or I will come to your house

- Tenant: It will cost you money if u don no get me money
- March 4
 - Tenant: Wtf why don't you tell them I have paid almost 600 for Internet and 850 for lights and for sure about 400 go his gas so fuck off I have never recied I dime if cash from bothif those dru ken assholes so tryto be on my side ok do u understand what the fuck I am telling you ask them if they have ever gave me a gucken penny ok I am done next tiem I am fucking hitting anybody that tells me there problem ok I am sick so fuck everybody see see the way I take care of this house maybe I will fucken break everything do you understand me do not come close to me go drink with your awesome tenant upstairs
- Undated:
 - Tenant: I tell me my wife and son can't be there I will crack uour scull asshole
 - Tenant: Someone will hurt today
 - Tenant: I already fucked up your sh
- Undated:
 - Tenant: When I go I will take blinds and everything I put there in the suite event the tiles paint do not worry about all the leaky shit I will fix it cause you did no so I hope it does not leak anymore it would cost you a fortune.
 - Tenant: When I go I will take blinds and everything I put there in the suite even the tiles paint.

[texts reproduced as written]

The co-owner testified that on one occasion the tenant chased the upstairs tenant with a golf club and when the upstairs tenant hid inside his unit, the tenant smashed the door and the mailbox with the golf club, causing damage.

The tenant testified that the upstairs tenant owes him money for utilities because all the utilities for both units are in his name. The tenant testified that the upstairs tenant wouldn't pay him and that made him really angry and so he chased the upstairs tenant with a golf club. The tenant testified that he smashed the mailbox with the golf club when the upstairs tenant went inside his suite. The tenant testified that he bought and installed the mailbox, so it was his property to destroy.

The co-owner testified that the 10 Day Notice was served on the tenant because the tenant did not pay rent for May, June and July 2022.

The 10 Day Notice was entered into evidence, is signed by the landlord, is dated July 2, 2022, gives the address of the rental unit, states that the effective date of the notice is July 10, 2022, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy is unpaid rent.

Both parties agree that the tenant usually pays rent in cash. The co-owner testified that the landlord provides receipts to the tenant for the cash payments. No rent receipts, rent ledger or other method of accounting was entered into evidence. The tenant testified that the landlord has never provided rent receipts.

The tenant testified that he stopped paying the landlord rent because the landlord lied about how much rent the tenant owed. The tenant testified that he hasn't paid rent for the last five months. The tenant then testified that he hasn't paid rent from August to November 2022 (a four-month duration). When this discrepancy was pointed out the tenant changed his testimony and said that he hasn't paid rent for the last four months.

The landlord entered into evidence a text from the tenant dated July 3 which states:

Oh yeh by the way you have lied about me not paying u rent for 3 mnths it is only for July you know what happens to you for lying in your handwrting that's criminal and i will prove it with notorize documents so you r really gonna get it [landlord] you i have all my bank records and dates from y wife and coworker you r fucked.to lie about not paying u for 2mnts rent

The landlord entered into evidence an undated text message from the tenant which states:

you lied about me not paying f8r may June rent i have proof 2 winess to prove you wrong

[texts reproduced as written]

The tenant testified that he wants to teach the landlord a lesson and will not move out without a bailiff and is prepared to wait for the sheriff.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Section 53(2) of the *Act* states that if the effective date stated on a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In accordance with section 46(1) of the *Act*, I find that the corrected effective date of the 10 Day Notice is July 16, 2022. In accordance with section 47(2) of the *Act*, I find that the corrected effective date of the One Month Notice is August 31, 2022.

Section 46(1) 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(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The tenant applied to dispute the 10 Day Notice on July 8, 2022. I find that the tenant failed to dispute the 10 Day Notice within five days of its deemed receipt.

Based on the testimony of the co-owner and the text messages from the tenant entered into evidence, I find, on a balance of probabilities, that the tenant did not pay July 2022's rent. I find that in the July 3 text message from the tenant to the landlord, the tenant confirmed that July rent was not paid and states that May and June rent were paid. I find that this text message, in concert with the tenant's original testimony that five months' rent was owed to the landlord, and the landlord's testimony proves, on a balance of probabilities, that the tenant failed to pay July 2022's rent on July 1, 2022 when it was due. I accept the landlord's testimony that the tenant did not pay any rent after receiving the 10 Day Notice and that July 2022's rent remains unpaid.

Based on the agreed testimony of both parties, I find that the tenant has not paid any rent from August to November 2022.

I find that the landlords have not proved, on a balance of probabilities, that the tenant failed to pay rent for May and June 2022 because the landlord has not provided any documentary evidence to support their claim which has been vigorously denied by the tenant. I also find that the text messages from the tenant to the landlord support the tenant's testimony that rent for May and June 2022 was paid.

I find that within five days of receiving the 10 Day Notice, the tenant did not pay the outstanding July rent. I find that while the tenant filed to dispute the 10 Day Notice within the required time period, since July 2022 rent was not paid on time or within five days of receiving the 10 Day Notice, the tenant's application to cancel the 10 Day Notice is cancelled and the 10 Day Notice is upheld.

Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #30.

Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the 10 Day Notice complies with section 52 of the *Act* and the tenant's application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Section 55(1.1) of the *Act* states that if an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Residential Tenancy Guideline #3 states

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and

because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

Pursuant to section 68(2) and Residential Tenancy Policy Guideline #3, I order that this tenancy ended on November 29, 2022, the date of this hearing, because the tenant has not yet vacated the subject rental property and the conclusive presumption does not apply. I note that the conclusive presumption does not apply because the tenant filed to dispute the 10 Day Notice within the required time period.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent.

I award the landlord a Monetary Order for unpaid rent as follows:

July 2022: \$1,100.00

August 2022: \$1,100.00

September 2022: \$1,100.00

October 2022: \$1,100.00

November 1-29 on a per diem basis: $\$1,100.00 \text{ (rent)} / 30 \text{ (days in November)} = \$36.67 \text{ (daily rate)} * 29 \text{ (day of tenancy in November)} = \$1,063.43$

Sections 47(1)(b), 47(1)(c), and 47(1)(d) of the *Act* state:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b)the tenant is repeatedly late paying rent;

(c)there are an unreasonable number of occupants in a rental unit;

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii)put the landlord's property at significant risk;

I find that two persons living in a two-bedroom unit is not an unreasonable number of occupants. I find that the tenant is permitted to have his wife visit. I find that the landlord is not entitled to an Order of Possession pursuant to section 47(1)(c) of the *Act*.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Based on the testimony of both parties, I find that the tenant was late paying rent in December 2021, February 2022, March 2022 and May 2022. Based on Residential Tenancy Policy Guideline 38 I find that the tenant is repeatedly late paying rent.

Based on the testimony of both parties, I find that the tenant chased the upstairs tenant with a golf club and struck a mailbox when the upstairs tenant took shelter in his home. I find that the above action significantly interfered with and unreasonably disturbed the upstairs tenant.

Upon review of the text messages from the tenant to the landlord, I find that the text messages threatened physical harm to the landlord and physical damage to the subject rental property. I find that the text messages seriously jeopardized the health or safety or a lawful right or interest of the landlord because the landlord has a right not to be

physically harmed and has a right not to be threatened. I find that threatening harm to the landlord and the landlord's property significantly interfered with and unreasonably disturbed the landlord. I find that the tenant's threats to damage the property are not idle threats and that the tenant's presence at the subject rental property is putting the landlord's property at significant risk.

Pursuant to my above findings and sections 47(1)(b), 47(1)(d)(i), 47(1)(d)(ii), and section 47(1)(d)(iii) of the *Act*, I uphold the One Month Notice and dismiss the tenant's application to cancel the One Month Notice.

Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$5,463.43.

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, 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 30, 2022

Residential Tenancy Branch