



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR OLC FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated June 6, 2022 ("10 Day Notice") pursuant to section 46;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord's agent ("EJ") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. MS attended the hearing when requested by EJ to provide testimony on behalf of the Landlord.

The Tenant stated she served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by registered mail on June 30, 2022, The Tenant submitted a Canada Post receipt, with the tracking number, for service of the NDRP on the Landlord. EJ acknowledged the Landlord received the NDRP by registered mail. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

EJ stated the Landlord did not serve any evidence on the Tenant.

Preliminary Matter – Non-Service of Tenant’s Evidence on the Landlord

The Tenant submitted copies of the first two pages of the 10 Day Notice and the first page of the tenancy agreement to the RTB. The Tenant admitted she did not serve these documents on the Landlord. Rule 3.15 of the RoP states:

3.15 Respondent’s evidence provided in single package

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, *the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.*

See also Rules 3.7 and 3.10.

[emphasis in italics added]

Although the Tenant did not serve her evidence on the Landlord in accordance with Rule 3.15, the evidence she submitted to the Residential Tenancy Branch (“RTB”) were documents that the Landlord already had in its possession. As I must review the 10 Day Notice and the tenancy agreement for this hearing, I will admit those documents into evidence.

Preliminary Matter - Addition and Removal of Respondents from Application

At the outset of the hearing, I noted name of the landlord (“BC Ltd.”) stated on the 10 Day Notice was different from the name of the respondent in the Application. EJ stated BC Ltd. is the landlord and that he is an agent of the BC Ltd.. EJ requested I amend the Application to remove him as the respondent and to add BC Ltd. as the respondent.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The 10 Day Notice served on the Tenant clearly stated BC Ltd. was the Landlord. The request by EJ that I amend the Application to remove him as the respondent and add BC Ltd. should have reasonably been anticipated by the Tenant. As such, I hereby amend the Application to remove EJ as the respondent and to add BC Ltd. as the respondent.

Preliminary Matter – Correction of Tenant’s First Name on 10 Day Notice

At the outset of the hearing, I noted the first name of the applicant consisted of one word whereas the Tenant’s first name listed on the tenancy agreement and on the 10 Day Notice consisted of two words. The Tenant stated her first name was spelled as one word as stated on the Application. EJ asked that I amend the 10 Day Notice to state the first name of the Tenant as one word as stated on the Application.

- 68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.

The Tenant made the Application to dispute the 10 Day Notice. As such, I find she knew, or should have known, that the correct spelling of her first name that was omitted from the 10 Day Notice. As such, I find that it is reasonable for me to amend the notice to add the correct spelling of her first name. Based on the foregoing, I order the 10 Day Notice to be amended to add the correct spelling of the Tenant’s first name.

Preliminary Matter – Severance and Dismissal of Tenant's Claim

The Tenants' Application included a claim for an order requiring the Landlord to comply with the Act, Regulations and/or tenancy agreement ("Tenant's Other Claim").

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. As such, I will sever the Tenant's Other Claim. If I cancel the 10 Day Notice, then I will dismiss the Tenant's Other Claim, with leave to reapply. However, if I issue an Order of Possession to the Landlord, then I will dismiss the Tenant's Other Claim without leave to reapply.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 10 Day Notice?
- Is the Tenant entitled to recover the filing fee for the Application from the Landlord?
- If the Tenant is not entitled to cancellation of the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and recover the rental arrears from the Tenant pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The parties agreed the tenancy commenced on November 1, 2020, for a fixed term ending October 31, 2021, with rent of \$1,800.00 payable on the 1st day of each month.

The parties agreed the rent was now \$1,827.00 per month. The Tenant was required to pay a security deposit of \$900.00 by October 14, 2020. EJ stated the Tenant paid the deposit and that the Landlord was holding it in trust for the Tenant.

EJ stated the 10 Day Notice was served on the Tenant's door on June 6, 2022. The 10 Day Notice had an effective date of June 19, 2022 and stated the Tenant had rental arrears of \$1,827.00 on June 1, 2022. The EJ stated the Tenant has not paid the rent for June or for any month since the date of the 10 Day Notice. EJ stated the Tenant now has rental arrears of \$9,135.00 as of the date of this hearing, calculated as follows:

Date	Owed	Paid	Balance
01-Jun-22	\$1,827.00	\$0.00	\$1,827.00
01-Jul-22	\$1,827.00	\$0.00	\$3,654.00
01-Aug-22	\$1,827.00	\$0.00	\$5,481.00
01-Sep-22	\$1,827.00	\$0.00	\$7,308.00
01-Oct-22	\$1,827.00	\$0.00	\$9,135.00
Total	\$9,135.00	\$0.00	\$9,135.00

The Tenant did not dispute EJ's testimony that she did not pay the rent for June or for any month thereafter but stated that, as she had disputed the 10 Day Notice, she was not required to pay any rent. The Tenant stated she did not receive third page of the 10 Day Notice.

EJ stated that he posted the 10 Day Notice on the Tenant's door on June 6, 2022 in the presence of MS. MS then attended the hearing and stated he was present when EJ posted the 10 Day Notice on the Tenant's door. MS stated all three pages of the 10 Day Notice were served by EJ on the Tenant's door.

The Tenant stated EJ and MS were both lying when they stated all three pages of the 10 Day Notice were served on her door. The Tenant stated the EJ and MS always work in the Landlord's office and never go to the residential property in which the rental unit is located. EJ denied the Tenants allegations that he and MS were lying and that they never leave their office to go to the residential property.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) 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.

EJ stated the Landlord served the 10 Day Notice on the Tenants' door on June 6, 2022. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on June 9, 2022. Pursuant to section 46(4), the Tenant had until June 14, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenant made her application on June 14, 2022. Accordingly, the Application was filed with the RTB by the Tenant within the 5-day dispute period required by section 46(4) of the Act

EJ testified the 10 Day Notice stated the Tenant had rental arrears of \$1,827.00 as of June 1, 2022. EJ stated the Tenant did not pay any rent for the subsequent months of July, August, September and October and the Tenant now has rental arrears of \$9,135.00 as calculated above.

Section 26 of the Act states:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the Act, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. As such, the Act is unequivocal that a tenant has the obligation to pay rent unless one or more of the following limited circumstances exist when a tenant is not required to pay the rent in full as follows:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

The Tenant did not provide any testimony, or submit any evidence, that she was excused from paying rent to the Landlord on the basis that she had a right under the Act to deduct all or a portion of the rent. As such, I find on a balance of probabilities, that the Tenant was not entitled to withhold any rent from the Landlord as contemplated by section 26(1) of the Act. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenants owed the Landlord \$1,827.00 on June 1, 2022, as stated in the 10 Day Notice.

The Tenant stated that the Landlord only served her with the first two pages of the 10 Day Notice. EJ stated he served all three pages of the 10 Day Notice on the Tenant's door. MS stated he was present when EJ served the 10 Day Notice and that all three pages of the 10 Day Notice were served by EJ on the Tenant's door. The Tenant stated that EJ and MS never go to the residential property in which the rental unit is located. EJ denied the Tenants allegations that he and MS were lying and that they never leave their office to go to the residential property. EJ stated that it was not true they never go to the residential property. I find, on a balance of probabilities, that all three pages of the 10 Day Notice were served on the Tenant's door. As such, I find there was a valid reason for the Landlord serving the Tenant with the 10 Day Notice and there is no basis upon which to cancel the 10 Day Notice. Based on the foregoing, I dismiss the Application.

Sections 55(1) and 55(1.1) of the Act state:

- 55(1) 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.
- (1.1) 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.

I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenant has not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on November 1, 2022.

2. Monetary Order for Unpaid Rent

EJ testified the Tenant has not paid any rent for June, July, August, September and October 2021 inclusive. The Tenant did not dispute she had not paid the rent for those months. As such, I find pursuant to section 26(1) of the Act, that the Tenant has rental arrears of \$9,135.00 for the months of June through October 2022. The Tenant must compensate the Landlord this amount. Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order that the Tenant pay the Landlord \$9,135.00 in satisfaction of the rental arrears. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenant's security deposit of \$900.00 from the rental arrears owed by the Tenant, leaving a balance of \$8,235.00.

3. Dismissal of Tenant's Claim for Filing Fee of Application

I have dismissed the Application. As such, the Tenant is not entitled to recover the filing fee of the Application.

4. Dismissal of Tenant's Other Claim

As I have issued an Order of Possession in favour of the Landlord, the Tenant's Other Claim is now moot. As such, I dismiss the Tenant's Other Claim without leave to reapply.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

I dismiss the Tenant's claim, without leave to reapply, for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement.

I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order that the Tenant pay the Landlord \$8,235.00 representing the following:

Description	Amount
Rental Arrears	\$9,135.00
Security and Pet Damage Deposits Credit	-\$900.00
Total	\$ 8,235.00

It is the Landlord's obligation to serve this Monetary Order on the Tenant. If the Tenant does not comply with the Monetary Order, it may be filed 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: November 2, 2022

Residential Tenancy Branch