



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC, MNDCT, RR, DRI-ARI-C, ERP, PSF, LRE, LAT, OLC, FFT
Landlord: OPC, FFL

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on July 8, 2022 seeking:

- a. to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- b. compensation for monetary loss or other money owed
- c. to reduce in rent for repairs not provided
- d. to dispute an additional rent increase for capital expenditures
- e. suspension/set conditions on the Landlord’s right to enter
- f. provision of services/facilities required by the agreement or law
- g. authorization to change the locks on the rental unit
- h. the Landlord’s compliance with the legislation and/or the tenancy agreement
- i. reimbursement of the Application filing fee.

The Tenant amended their Application on September 14, 2022 seeking

- j. the Landlord’s provision of emergency repairs for health or safety reasons.

The Landlord filed an Application for Dispute Resolution on July 9, 2022 seeking an order of possession for the rental unit. They also applied for reimbursement of the Application filing fee.

These matters are crossed and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 1, 2022.

Both parties attended the telephone conference call hearing. The Tenant joined the hearing 15 minutes after its commencement at the scheduled hearing time.

Preliminary Matter – relevant issues

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 the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, 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. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

By application of Rule 6.2, I dismiss the other parts of the Tenant’s Application – parts b. through h. listed above, with leave to reapply.

Preliminary Matter – the Tenant’s evidence

The Tenant provided evidence to the Residential Tenancy Branch on November 28, 2022.

The *Residential Tenancy Branch Rules of Procedure* is the comprehensive set of rules that govern the hearing process. This is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. Rule 2.5 specifies that an applicant should submit copies of all documentary and digital evidence to be relied on in the proceeding. An applicant must serve this evidence to the respondent with the Notice of Dispute Resolution Proceeding, within three days after it is made available by the Residential Tenancy Branch.

Additionally, Rule 3.14 provides that evidence not submitted at the time of an application being filed must be received by a respondent and the Residential Tenancy Branch “not less than 14 days before the hearing.”

The Tenant did not follow this rule in providing evidence to the Residential Tenancy Branch on November 28; this is 3 days prior to the scheduled hearing on December 1. Because the Tenant was late to the hearing there was no opportunity to review these timelines in detail.

By application of Rule 3.17, I exclude this evidence from consideration. Given it does not refer to the matters of cause for which the Landlord issued the One-Month Notice – the single key issue in this hearing – I exclude this evidence from consideration.

Preliminary Matter – the Landlord’s evidence

The Landlord provided evidence to the Tenant in documentary, photo, and video format. The Landlord provided their material to the Tenant via registered mail. In a prepared “Proof of Service” document the Landlord provided that the date for “all evidence submitted with the application” was July 24, 2022. They provided a copy of the registered mail receipt for proof of this.

The Tenant stated the “USB was blank”; however, they received other prior paperwork from the Landlord. Because the Tenant was late to enter the hearing, there was no time to review the matter in detail.

Rule 3.10.5 provides that a party who provides digital evidence to the other party “must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.” Further: “If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.”

Without an account of the Landlord’s confirmation of the Tenant’s receipt of both the digital evidence and their ability to gain access to that evidence, I exclude the Landlord’s video and picture evidence from consideration here.

Issue(s) to be Decided

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

Should the Tenant be unsuccessful, is the Landlord entitled to an Order of Possession for cause pursuant to s. 55 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

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Background and Evidence

The Landlord submitted a copy of the tenancy agreement that the parties signed on June 24, 2015. The tenancy began on August 1, 2015. The set rent amount was \$1,132 and over the course of the tenancy increased to \$1,305.

The Landlord submitted as evidence a copy of the One-Month Notice signed on June 27, 2022. This set the end-of-tenancy date at July 31, 2022. The reasons for the Landlord issuing the One-Month Notice are:

- ☐ Tenant or a person permitted on the property by the tenancy has significantly interfered with or unreasonably disturbed another occupant or the landlord
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- ☐ Breach of a material term of the tenancy agreement that was not corrected with a reasonable time after written notice to do so.

The Landlord provided a brief description of details: "The resident has received warning letters regarding noise, disturbing neighbours and damage to property." The Landlord reviewed these issues in the hearing and the Tenant responded to the charges.

The document itself provides information on page 2:

- The One-Month Notice is received on the day it is given to the Tenant in person.

- The Tenant has the right to dispute the One-Month Notice within 10 days after they receive it by filing an Application with the Residential Tenancy Branch.
- An arbitrator may extend that timeline if a tenant accepts a party's proof that they had a serious and compelling reason for not filing the application on time.
- "If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of [the] Notice."
- The date a person receives documents is what is used to calculate the time to respond.

The Landlord provided a "Proof of Service" document for the One-Month Notice, showing service on June 27, 2022 at 5:15pm, directly in person to the Tenant. A witness signed to attest to their observation of this method of service at that date and time.

The Tenant applied to the Residential Tenancy Branch to dispute the One-Month Notice on July 8, 2022. The Tenant on their Application did not indicate they were not filing the Application on time and did not address this in the hearing.

After their Application, the Residential Tenancy Branch confirmed the Tenant's Application on July 21, 2022 when it provided the Notice of Dispute Resolution to the Tenant via email at 01:27pm. That email message contains a red-highlighted important instruction to the Tenant:

It is noted that you received the One Month Notice to End Tenancy for Cause on June 27, 2022 and your Application for Dispute Resolution was submitted on July 8, 2022 which is outside the ten day dispute period outlined on the notice. You did not request more time to submit your application, so you may wish to amend this.

Analysis

The Act s. 47 allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following conditions set out in the subsections applies.

Following this, s. 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Then, s. 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to

have accepted that the tenancy ends on the effective date of the notice, and they must vacate the rental unit.

In this case, I find the Landlord issued the One-Month Notice pursuant to s. 47 and I accept the Landlord's evidence that they served this document to the Tenant on June 27, 2022.

The *Act* s. 52 provides:

- 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) . . . state the grounds for ending the tenancy,
. . . and
 - (e) when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content. The details of the cause are stated on the document. This complies with s. 52 of the *Act*.

I find that the Tenant did not dispute the Notice within ten days as set out in s. 47(4). The Residential Tenancy Branch informed the Tenant of this at the time of their Application.

I find that the Tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with s. 47(5).

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or a landlord's notice is upheld, a landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord here is entitled to an Order of Possession.

The Tenant was not successful on their Application; accordingly, I find they are not entitled to reimbursement of the Application filing fee. The Landlord was successful in this hearing; therefore, I grant a monetary order for reimbursement of the Application filing fee to them.

Conclusion

Under s. 55(1) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it will be enforced as an order of that Court.

I order the Landlord to retain \$100 from the Tenant's security deposit of \$566 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit of \$566 will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

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: December 5, 2022

Residential Tenancy Branch