



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, RR, RP, LAT, AS, OLC, FFT, OPR, MNRL-S, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the “Act”) for Orders as follows:

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The tenant applied as follows:

- For cancellation of the landlords 10 Day Notice to End Tenancy (“10 Day Notice”) pursuant to section 46 of the Act
- For a monetary order for damage or compensation pursuant to section 67 of the Act
- Reducing rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- Requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- Authorizing the tenant to change the locks on the rental unit pursuant to section 31 of the Act
- Allowing the tenant to assign or sublet the rental property pursuant to section 65 of the Act
- Requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlords being represented by landlord BX, BL (translator), and PX (representative), while the tenant, HW appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant acknowledged receiving the landlord's dispute notice and I find that service was in accordance with section 89 of the Act.

Preliminary Issue

Rule 2.3 of the RTB Rules of Procedure states that "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." This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The main issue is the dispute of the 10 Day Notice and whether the landlord is entitled to an order of possession. All other issues are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure as they are not related to the main issue. The tenant has leave to reapply on all other issues. This decision does not extend any time limits set out in the Act.

The landlord testified that he received the tenant's dispute notice and materials and I find he was served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is either party entitled to a reimbursement for their respective filing fees?

Background and Evidence

The tenancy commenced July 1, 2022 and is on a fixed term until December 31, 2022. Rent is \$1,400.00 per month due the first day of the month and the landlord holds a security deposit of \$700.00 in trust for the tenant. The tenant still occupies the residence.

The landlord testified that he served the tenant the 10 Day Notice dated October 2, 2022, with an effective date of October 13, 2022, in person on October 2, 2022. He stated he attended at the rental unit accompanied by a witness. He alleges that the tenant accepted the 10 Day Notice and ripped it up. Therefore, he stated that he provided the 10 Day Notice to the tenant through email on the same day, October 2, 2022, at the request of the tenant.

The tenant denies ripping up the 10 Day Notice. He alleges that the landlord attended at the residence, the tenant did not wish to open the door, but the landlord persisted. The tenant stated he opened the door and a physical altercation occurred between him and the landlord. Then tenant alleges the 10 Day Notice was destroyed in the scuffle. The tenant agrees that he received the 10 Day Notice by email although was vague on the date he received it. The tenant argues that the landlord did not use a valid method of service under the Act.

The tenant testified that he received the landlord's dispute notice but was unsure as to whether he received all of the landlord's materials

The parties agree that the tenant sent an etransfer to the landlord on October 10, 2022, for \$1,400.00 for October rent. The landlord stated he would not accept the etransfer as the tenant had placed conditions on his acceptance requiring the landlord to withdraw the 10 Day Notice. Both parties agree the tenant later withdrew the conditions, and the landlord accepted the tenants etransfer on October 14, 2022.

The landlord stated that the tenant is currently not in arrears on rent.

Analysis

Service

Section 12 of the RTB Policy Guidelines states:

The purpose of serving documents under the Legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them

Section 71 of the Act states:

71 (1)The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2)In addition to the authority under subsection (1), the director may make any of the following orders:

(b)that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

The purpose of service is to make the parties aware that action is being taken against them, and to given them an opportunity to respond in accordance with the timelines set out in the legislation, as well as allowing them to prepare their evidence in anticipation of a hearing.

The landlord made an attempt at proper service which was unsuccessful due in part to the actions of the tenant. He then provided the 10 Day Notice by another method which is only permitted under the legislation if it is prearranged by the parties.

However, I note in reviewing the dispute notice that the tenant made his application for dispute resolution on October 2, 2022, the date that the landlord stated he served the tenant personally and emailed him the 10 Day Notice. Therefore, I find pursuant to section 71 of the Act that the tenant was sufficiently served on October 2, 2022, and that he was not prejudiced by the manner of service.

During the hearing the tenant did not point to any materials that he had not received that were relevant to the hearing therefore I find the tenant properly served in accordance with sections 88 ad 89 of the Act.

Validity of the 10 Day Notice

The 10 Day Notice complies with the form and content requirements of section 52 of the Act. The parties agree that the tenant paid rent by e-transfer on October 10, 2022, although there is a disagreement between the parties regarding whether the landlord could accept this e-transfer, as there were conditions placed on the acceptance by the tenant.

Section 46(4) of the Act states:

- (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.

The tenant in this case did not pay the rent within 5 days of the receiving the 10 Day Notice. Under section 46 of the Act the tenant was required to pay rent in full by October 7, 2022. The tenant did not do this. The tenant filed his dispute notice within the 5-day timeframe; however, he agreed in the hearing that the first attempt he made to pay rent was on October 10, 2022.

I find that the landlord has established the validity of the 10 Day Notice and therefore I dismiss the tenant's application. As the tenant's application was unsuccessful, he is not entitled to recover his filing fee.

The landlord is entitled to an order of possession. The tenant was not in arrears on rent as of the date of the hearing and the landlord is therefore not entitled to a monetary order for unpaid rent. As the landlord was successful in his application for an order of possession, he is entitled to recover his filing fee.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order

of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

As the landlord was successful in his application, he is also entitled to recover the filing fee for his application. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit in full satisfaction for a return of the filing fee.

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: December 19, 2022

Residential Tenancy Branch