



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR**
 LL: OPR-DR MNR-DR FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated July 4, 2022 (“10 Day Notice”) pursuant to section 46;

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55; and
- a monetary order for unpaid rent under section 55.

The Landlord and the Tenant attended this 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.

The Landlord stated she served the Notice of Dispute Resolution Proceeding for the Landlord’s Application and some of her evidence (“Landlord’s NDRP Package”) on the Tenant by registered mail on July 29, 2022. The Landlord submitted a copy of the Canada Post receipt and tracking number for service of the Landlord’s NDRP Package on the Tenant. I find the Landlord’s NDRP Package was served on the Tenant pursuant to the provisions of sections 88 and 89 of the Act.

The Landlord stated she served additional evidence on the Tenant by registered mail on October 2, 2022. The Landlord submitted a copy of the Canada Post receipt and

tracking number for service of the Landlord's additional evidence on the Tenant. I find the Landlord's additional evidence was served on the Tenant pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Non-Service of Tenant's Notice of Dispute Resolution Proceeding

The Tenant stated he did not serve the Notice of Dispute Resolution Proceeding ("Tenant's NDRP") for the Tenant's Application on the Landlord. Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

The Tenant admitted he did not serve the Tenant's NDRP on the Landlord. As such, he did not comply with Rule 3.1 of the RoP. Based on the foregoing, I dismiss the Tenant's Application without leave to reapply.

Preliminary Matter – Removal of Applicants from Landlord's Application

At the outset of the hearing, I noted the 10 Day Notice and the tenancy agreement only stated the Landlord's name whereas the Landlord's Application stated the applicants were the Landlord and three other persons ("BP", "AP" and "LH"). The Landlord stated BP, AP and LH were the other owners of the rental unit. The Landlord requested that I amend the Landlord's Application to remove BP, AP and LH as an applicants. 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.

I find the Tenant could have reasonably anticipated the Landlord would make a request for an amendment to remove BP, AP and LH as applicants in the Landlord's Application on the basis that BP, AP and LH were not named in the tenancy agreement or 10 Day Notice as landlords. As such, I amend, pursuant to Rule 4.2 of the RoP, the Landlord's Application to remove BP, AP and LH as an applicants.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent 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, only the details of the respective submissions and/or arguments of the parties relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the claims made in the Landlord's Application and my and my findings are set out below.

The parties agreed the tenancy commenced on May 1, 2022, for a fixed term ending April 30, 2023, with rent of \$1750.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$875.00 by April 27, 2022. The Landlord acknowledged she received the deposit from the Tenant and that she was holding it in trust for the Tenant.

The Landlord submitted into evidence a copy of the 10 Day Notice. The Landlord stated she served the 10 Day Notice on the Tenant in-person on July 4, 2022. The Tenant acknowledged he received the 10 Day Notice from the Landlord. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenant had rental arrears of \$650.00 as of July 1, 2022. The Landlord stated the rental arrears arose because the Tenant only paid \$1,100.00 towards the rent due on July 1, 2022. The Tenant admitted he only paid \$1,100.00 because he suffered an injury at work and he had to wait to receive disability benefits.

Analysis

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.

The 10 Day Notice was served on the Tenant in person on July 4, 2022. Pursuant to section 46(4), the Tenants had 5-days, or until July 9, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenants' Application was filed on July 8, 2022. As such, I find the Tenant's Application was filed within the 5-day dispute period required by section 46(4) of the Act.

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 s. 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. The Act stipulates a set of limited circumstances in which monies claimed by a tenant can be deducted from rent, which include:

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 admitted he only paid \$1,100.00 towards the rent \$1,750 owing for July 1, 2022 leaving rental arrears of \$650.00. The Act does not contain hardship provisions that would allow a tenant to withhold rent on the basis of financial hardship. I find that none of the circumstances listed above that permit a Tenant to withhold rent are presently applicable. Based on the foregoing, I find there was a valid reason for the Landlord serving the Tenant with the 10 Day Notice.

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.

Section 55(1) requires that I grant the Landlord an Order of Possession if the Tenant's Application has been dismissed and the 10 Day Notice complies with section 52.

Section 52 of the Act states:

- 52 *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 in italics added]

I have reviewed the 10 Day Notice and found that it was given to the Tenant on an older Form RTB-30 that was not in the approved form. The form RTB-30 used by the Landlord is only 2 pages long while the current form RTB-is 3 pages long and the new form provides significantly more information on the rights of tenants to dispute a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities. Even though the Landlord had a valid reason to issue a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities, the 10 Day Notice was not in the approved form required by section 52 of the

Act. As such, the 10 Day Notice was not effective. Based on the foregoing, I find the Landlord is not entitled to an Order of Possession pursuant to section 55(1) of the Act. The tenancy continues until it is ended in accordance with the provisions of the Act.

Section 55(1.1) requires that I grant the Landlord a monetary order requiring payment of the unpaid rent to the Landlord if I dismiss the Tenant's Application and the 10 Day Notice complies with section 52. As noted in the previous paragraph, the 10 Day Notice given by the Landlord was not effective. As such, the Landlord is not entitled to a monetary order for the rental arrears owing to the Landlord by the Tenant pursuant to section 55(1.1) of the Act.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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

The tenancy continues until it is ended in accordance with the provisions of the Act.

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 3, 2022

Residential Tenancy Branch