



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: CNC CNR MNDCT RR RP OLC OPU
MNRL MNDCL FFL PSF LRE

Introduction

The landlord seeks an order of possession on four notices to end the tenancy and a monetary order pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks orders cancelling the notices to end the tenancy and various other relief under the Act.

Neither party raised any issues regarding the service of evidence. Both parties were affirmed before giving testimony. The landlord was accompanied in the hearing by her partner, from whom I did not need to hear any testimony.

Preliminary Issue: Dismissal of Unrelated Claims

According to Rule 2.3 of the *Rules of Procedure*, claims made in an application must be related to each other. The arbitrator has the discretion to dismiss unrelated claims, with or without the opportunity to reapply.

After careful consideration, I have determined that the claims for everything other than the request for an order cancelling at least one of the notices to end the tenancy unrelated and should be dismissed. This decision is also made in the interest of efficient case management.

The tenant’s claims for a repair order, an order for reduced rent, an order to restrict the landlord’s right of entry, an order for compliance, and an order for the provision of facilities or services are dismissed *without* leave to reapply. However, the tenant’s claim for compensation is dismissed with the option to reapply.

Issues

1. Is the tenant entitled to an order cancelling the notices to end tenancy?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order?

Background and Evidence

In reaching this decision, I carefully considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below. As such, much of the parties' testimony will not be reproduced below.

The tenancy began on February 20, 2020. Monthly rent is \$1,595.00 and the tenant paid a \$800.00 security deposit. There is a written tenancy agreement in evidence.

The landlord issued a *One Month Notice to End Tenancy for Cause* on July 24, 2022. The tenant then stopped paying rent and the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* on August 6, 2022. A second *10 Day Notice to End Tenancy for Unpaid Rent* was issued on September 17, 2022, and a third *10 Day Notice to End Tenancy for Unpaid Rent* was given on October 16, 2022. Copies of the notices to end tenancy were in evidence and there was dispute by the tenant as to service, form, or content of the notices.

The landlord testified that the three *10 Day Notices to End Tenancy for Unpaid Rent* were given because the tenant stopped paying rent after they received the one-month notice. According to the landlord the tenant has not paid any rent since August and five months' rent arrears are now \$7,975.00. In addition, the tenant owes \$1,285.81 in unpaid utilities.

It should be noted that while two tenants are listed on the tenancy agreement, only the tenant in this dispute is a current tenant. The other tenant, Mr. Todd, vacated the property sometime in the summer of 2021. He is therefore not a party to this dispute.

The tenant testified that this entire matter started when the washing machine started leaking. The tenant had to wait for the part to come in and the landlord told her that any expenses related to having to do the laundry at a laundromat could be deducted from the rent. The tenant testified that the landlord didn't stick to her word on this promise.

Thus, the tenant explained that she stopped paying the rent because of the washing machine not being repaired. At some point, however, the washing machine was working again. The tenant testified that the washing machine “was working up to a week ago.” In her estimation the amount expended at the laundromat roughly equals what she owes the landlord.

In her brief rebuttal the landlord commented that the leaking washing machine (which was discovered to be leaking a few months into the tenancy) was not a problem for the tenant until the landlord issued the *One Month Notice to End Tenancy for Cause*.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence proves that the tenant did not pay rent on August 1, 2022 and that no rent has been paid since. Despite the inoperable washing machine—which turns out to have been working for at least some portion of the past several months—the tenant did not have a legal right to withhold the rent. I am not persuaded that the tenant's laundromat expenses would have been anywhere near the \$9,200 in rent and utility arrears now owing to the landlord. It is worth noting that the tenant did not dispute the fact that she has not paid rent or utilities, nor did she dispute the amount owing.

Therefore, I find on a balance of probabilities that the three *10 Day Notice to End Tenancy for Unpaid Rent* were given for a valid reason, namely, the tenant's non-payment of rent. I also find that all three notices comply with the form and content requirements of section 52 of the Act. As a result, the tenant's applications to cancel the three *10 Day Notice to End Tenancy for Unpaid Rent* must be dismissed. Having dismissed the tenant's applications to cancel the three *10 Day Notice to End Tenancy for Unpaid Rent* I need not consider the merits of the one-month notice.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

To answer the landlord's question about how to serve the order of possession: any method of service listed in section 88 of the *Residential Tenancy Act* is permitted.

Further, since the landlord's application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1). This includes unpaid utilities. Thus, the tenant is ordered to pay \$9,260.81 to the landlord.

As the landlord was successful in her application, she is entitled to an additional \$100.00 in compensation to cover the cost of the application filing fee under section 72 of the Act. In total, the landlord is awarded \$9,360.81.

Pursuant to section 38(4)(b) the landlord is ordered to retain the security deposit in partial satisfaction of the award. A monetary order for the remaining amount (\$8,560.81) is attached to this Decision and must be served on the tenant by the landlord. The monetary order is enforceable in the Provincial Court of British Columbia.

Conclusion

The tenant's applications are hereby **DISMISSED**, with and without leave to reapply.

The landlord's application is hereby **GRANTED**. The landlord is granted an order of possession and a monetary order, subject to the deductions as set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 23, 2022

Residential Tenancy Branch