



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, CNR, MNDCT, LRE

Introduction

This hearing dealt with the tenant's application and amendment, pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause, dated August 9, 2022 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 8, 2022 ("10 Day Notice"), pursuant to section 46;
- a monetary order of \$500.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The tenant did not attend this hearing, which lasted approximately 47 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began 9:30 a.m. with only me present. The landlord's witness called in late at 9:33 a.m., left the hearing and called back in at 9:37 a.m., due to a bad telephone connection, and left again at 9:40 a.m. and did not return to testify. The landlord called in late at 9:34 a.m. I informed the landlord that his witness testimony was not relevant or required for this hearing. This hearing and ended at 10:17 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's witness, and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He stated that he owns the rental unit. He confirmed the rental unit address. He provided his email address for me to send this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions. He stated that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Documents

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendment, filed on December 15, 2022, to cancel the landlord's 10 Day Notice. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment.

The landlord stated that the tenant was served with the landlord's evidence package on December 22, 2022, by way of registered mail to the rental unit, where the tenant is still residing. The landlord provided a Canada Post tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on December 27, 2022, five days after its registered mailing.

The landlord testified that he served the tenant with the landlord's 1 Month Notice on August 9, 2022, by way of posting it to the tenant's rental unit door. He claimed that a person helping him with the refrigerator in the rental unit, was present during service. The tenant stated in this application that he received the 1 Month Notice on August 22, 2022, by posting to his door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on August 12, 2022, three days after its posting.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice on December 13, 2022, by a board member who lives onsite at the residential property. The landlord said that the effective date on the notice is December 18, 2022. The tenant stated in the amendment to his application, that he personally received the 10 Day Notice on December 13, 2022. In accordance with sections 88 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on December 13, 2022.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the *RTB Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice or a 1 Month Notice, the landlord is entitled to an order of possession if any of the notices meet the requirements of section 52 of the *Act*.

Section 55(1.1) of the *Act* states the following:

55(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.

Pursuant to section 55 of the *Act*, the landlord is entitled to a monetary order for unpaid rent without filing a separate application, if I dismiss the tenant's application to cancel a 10 Day Notice and it meets the requirements of section 52 of the *Act*.

Issue to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice or the 1 Month Notice?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 20, 2020. Monthly rent in the current amount of \$1,370.00 is payable on the first day of each month. The monthly rent was initially \$1,350.00 at the beginning of this tenancy. The monthly rent was increased to \$1,370.00, pursuant to a Notice of Rent Increase, dated April 26, 2022 ("NRI"), and served to the tenant in person and on the door, by a realtor, on the same date. The new rent was payable effective August 1, 2022. A security deposit of \$675.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord confirmed that the 1 Month Notice, which has an effective move-out date of September 15, 2022, was issued to the tenant for the following reasons:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlord stated the following facts. He seeks an order of possession and a monetary order of \$70.00 against the tenant. The tenant was late paying rent in 2022 on the following dates: January 20, April 2, June 7, July 2, August 2, October 2, and November 2. The tenant paid partial rent of \$1,300.00 on December 1, 2022, with a balance of \$70.00 still unpaid. The tenant deducted \$70.00 from December 2022 rent, without the landlord's permission, stating that the tenant bought and installed an oven, and provided a receipt to the landlord for same. The tenant is not entitled to deduct the oven cost from rent. The tenant paid full rent of \$1,370.00 to the landlord on January 1, 2023. The landlord issued four 10 Day Notices to the tenant in January, June, August, and December 2022. The landlord pursued an eviction of the tenant at this hearing and

did not tell the tenant that he could remain at the rental unit, when the tenant paid rent after the effective dates on the landlord's 10 Day Notice and 1 Month Notice.

Analysis

Order of Possession

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant was deemed to have received the 1 Month Notice on August 12, 2022, and filed this application to dispute it on August 22, 2022. Therefore, he is not within the time limit under the *Act*. The tenant applied for more time to dispute the notice, but he did not appear at this hearing to present his evidence or indicate exceptional circumstances that prevented him from filing on time.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I accept the undisputed, affirmed testimony of the landlord at this hearing, as the tenant did not attend.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. In this case, rent is due on the first day of each month.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." The landlord provided undisputed, affirmed testimony that the tenant was late paying rent more than three times during this tenancy in the year 2022. The landlord provided 7 late rent dates between January and November 2022, and a partial rent payment date in December 2022. Accordingly, I find that the tenant was repeatedly late paying rent. I find that the landlord's 1 Month Notice was issued for a valid reason. As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other two reasons.

Section 55(1) of the *Act* reads as follows:

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.

As noted above, I dismissed the tenant's application to cancel the landlord's 1 Month Notice, without leave to reapply.

I find that this tenancy ended on September 30, 2022, the corrected effective date on the 1 Month Notice. As rent is due on the first day of each month, the notice is effective on the day before rent is due. Since the notice was issued to the tenant in August 2022, the tenant is entitled to a full month's notice for September 2022.

I find that the landlord is entitled to an order of possession, effective two (2) days after service to the tenant, pursuant to section 55 of the *Act*. The corrected effective date of September 30, 2022, has long passed, at the time of this hearing and decision on January 16, 2023. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation*, or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. The landlord stated that the rent of \$70.00 for December 2022, was still unpaid by the tenant, as of the date of this hearing.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$70.00 for December 2022. I find that the landlord provided affirmed testimony of issuing a legal NRI to the tenant on April 26, 2022, with three months' notice, which increased the monthly rent from the original amount of \$1,350.00 in the tenancy agreement, to the new amount of \$1,370.00, effective August 1, 2022, which complies with the 1.5% allowable RTB *Regulation* amount in 2022. I find that the legal allowable amount of rent due, effective August 1, 2022, is \$1,370.00 per month. Therefore, I find that the landlord is entitled to \$70.00 in rental arrears from the tenant for December 2022 rent.

The landlord continues to hold the tenant's security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain

\$70.00 from the tenant's security deposit of \$675.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$605.00 is to be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

I find that the landlord did not waive his right to enforce the 1 Month Notice or the 10 Day Notice by accepting rent from the tenant after the effective dates of the notices. The landlord did not withdraw the notices, he continued to pursue an order of possession against the tenant at this hearing, and the tenant filed a dispute of the notices in this application. The landlord issued four 10 Day Notices to the tenant from January to December 2022, to indicate that rent was unpaid.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service to the tenant. The tenant must be served with this Order. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$70.00 from the tenant's security deposit of \$675.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$605.00 is to be dealt with at the end of this tenancy, in accordance with section 38 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: January 16, 2023

Residential Tenancy Branch