



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR / CNR, RP, OLC / CNR, OLC/ CNR, LAT /
OPR-DR, MNR-DR, FFL

This hearing dealt with five applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,691.22 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s four applications for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of four 10 Day Notices to End Tenancy for Unpaid Rent (the “**September Notice**”, the “**October Notice**”, the “**November Notice**” and the “**December Notice**”; collectively, the “**Notices**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to change the locks to the rental unit pursuant to section 70.

This matter was reconvened from a prior hearing on January 17, 2023. I issued an interim decision setting out the reasons for the adjournment on that same day (the “**Interim Decision**”). This decision should be read in conjunction with Interim Decision.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager (“**KT**”).

Preliminary Issue – Amendment

At the hearing the landlord sought to further amend its application to include a claim for October, November, and December 2022 and January 2023 rent which KT testified remains outstanding, as well as for a claim for the late fee for each of these months (\$100 total).

Rule of Procedure 4.2 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.

In this case, the landlord seeks compensation for unpaid rent and administration fees that have increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for October 2022 to January 2023 rent and administration fees, with the new total of the monetary amount sought being \$8,456.10).

Preliminary Issue – Service

The parties acknowledge that each had received the other's application of dispute resolution packages. However, the tenant testified that she did not receive the landlord's second evidence package, which was posted on the door of the rental unit on January 11, 2023, as she had been in the hospital since January 6, 2023. The bulk of this evidence package related to the landlord's response to the tenant's applications for an order that the landlord comply with the Act, to make repairs, and to change the locks.

Before making a ruling on the admissibility of this evidence, I asked a few questions regarding the tenant's application to cancel the Notices, and it immediately became apparent that the evidence served on January 11, 2023 would not be relevant to the outcome of the case.

Facts and Analysis

The parties agree that the tenant's monthly rent is \$1,666.22. The tenancy agreement submitted into evidence by both parties show that the tenant paid a security deposit of \$800 and that the landlord is authorized to charge a \$25 administration fee for late-paid rent. The parties agree that the tenant has not paid rent since August 1, 2022. As such, the tenant is five months in arrears, totaling \$8,331.10. On her applications, the tenant indicated that she was served with the Notices as follows:

- September Notice on September 2, 2022;
- October Notice on October 2, 2022;
- November Notice on November 2, 2022; and
- December Notice on December 2, 2022.

The tenant testified that she was currently suffering from cancer and that she has been unable to pay her rent. She testified that she was denied disability coverage by a third

party insurer and was in the process of applying for financial relief from the BC Government. She was unsure when or if this relief would be forthcoming.

The tenant agreed she owed the landlord the amount claimed, and indicated that she hoped I could order a payment plan to repay the arrears, and give her some time to move out of the rental unit with her two children (aged 20 and 15, both of whom, she testified, suffer from mental disabilities).

TK stated that the landlord would not agree to a repayment plan, and given the length of time the tenant had not paid rent, she wanted the tenant to vacate as soon as possible.

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

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.

The tenant has not paid \$8,331.10 in rent and has accrued \$125 in late fee. I find that the landlord is entitled to a monetary order for these amounts. The Act does not give an arbitrator the discretion to make a monetary order payable on a schedule, as such these amount payable immediately.

Section 46 of the Act, in part, states:

Landlord's notice: non-payment of rent

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]*.

As such, the landlord issued the Notices for valid reasons. I have reviewed the Notices and find that they comply with the form and content requirements of section 52 of the Act. As such, the landlord is entitled to an order of possession for the rental unit.

In light of the tenant's health concerns and that she has two children living with her, I find that the order of possession should be effective as of February 19, 2023. The tenant is required to pay prorated rent for the month of February in the amount of \$1,130.65 ($\$1,666.22 / 28 \text{ days} = \59.51 ; $\$59.51 \times 19 \text{ days} = \$1,130.65$).

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

I dismiss the tenant's applications to cancel the Notices. As I have ordered the tenancy will end on February 19, 2023, the other portions of the tenant's applications are moot. I dismiss them as well.

Conclusion

I dismiss the tenant's applications without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$7,756.10, representing the following:

Description	Total
Arrears	\$8,331.10
Administration fees	\$125.00
Filing fee	\$100.00
Security deposit credit	-\$800.00
	\$7,756.10

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by February 19, 2022 at 1:00 pm.

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 19, 2023

Residential Tenancy Branch