



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC, RP, FFT
Tenant: CNR, RP, FFT
Landlord: OPR, OPC, MNRL-S, MNDL-S, FFL

Introduction

On August 29, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- b. for repairs made to the rental unit;
- c. for reimbursement of the Application filing fee.

On September 18, 2022, they submitted a second Application:

- d. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”);
- e. for repairs made to the rental unit, after contacting the Landlord in writing;
- f. for reimbursement of the Application filing fee.

The Landlord filed an Application, joined to the Tenant’s initial Application, on October 5, 2022, for:

- a. an Order of Possession in line with the One-Month Notice;
- b. an Order of Possession in line with the 10-Day Notice;
- c. compensation for unpaid rent – request to retain any deposit(s);
- d. compensation for damage in the rental unit – request to retain any deposit(s)
- e. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on January 17, 2023. Both parties attended the teleconference hearing.

Preliminary Matter – Tenant’s service of 1st Notice of Dispute Resolution Proceeding and evidence

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties’ submission and provision of evidence to the Branch and each other. This sets timelines for doing so. The *Act* sets out acceptable methods for service of documents.

The Tenant stated they provided a copy of the Notice of Dispute Resolution Proceeding, issued by the Residential Tenancy Branch on September 13, 2022, to the Landlord via registered mail. This included “just evidence, everything” and all forms provided to them by the Branch. The Landlord confirmed they received this initial package from the Tenant via registered mail.

Preliminary Matter – Tenant’s service of 2nd Notice of Dispute Resolution Proceeding

The Tenant also sent this material via registered mail; however, the Landlord stated they did not receive information directly from the Tenant on this second Application that was linked to the first. The Tenant stated they did not know the procedure where they already had an Application in place, and the evidence for them was the same as that initial matter.

For this second Tenant Application, I find that the Tenant did not notify the Landlord as required. This is set within strict timelines, as per s. 59(3) of the *Act*, and s. 89 gives the methods for service. The Tenant did not provide registered mail information, or other details about the service as they did in their initial Application. Further, the Landlord stated they were informed about the Tenant’s second Application from the Residential Tenancy Branch in communication for preparation in this hearing.

I find the Tenant did not provide a copy of the second Notice of Dispute Resolution Proceeding – that document that is generated when a person applies for dispute resolution – to the Landlord, either through mail or in person. This is prejudicial to the

Landlord who then could not provide response evidence, being unaware of the details of the Tenant's second Application.

I dismiss the Tenant's second Application for dispute resolution, with leave to reapply. I dismiss the Tenant's claim for compensation of the filing fee on this Application without leave to reapply. This decision does not impact any deadlines as set forth in the *Act*.

Preliminary Matter – Landlord's service of Notice of Dispute Resolution Proceeding and evidence

The Landlord stated they used registered mail to send the Notice of Dispute Resolution Proceeding, as well as their evidence, to the Tenant. The Tenant acknowledged service of the same.

Given the Tenant's confirmation, I find the Landlord provided the Notice of Dispute Resolution providing information on their Application, and associated evidence, to the Tenant in a manner prescribed by the *Act* and within the timelines established in the *Rules of Procedure*.

Preliminary Matter – unrelated issue

At the outset, I advised both parties of the immediate issues concerning the two Notices to End Tenancy issued by the Landlord. These are: a. the One-Month Notice, and d. the 10-Day Notice.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the other issue concerning repairs in the rental unit listed above, item b. By Rule 2.3, this issue is unrelated, and I amend the Tenant's Application to

exclude this matter. The Tenant has leave to reapply on this other issue. This means they may file a new and separate application to address this issue, and this does not preclude proper consideration of this issue by another arbitrator.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts and/or damages in the rental unit, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for their initial Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant stated they did not receive any documented tenancy agreement from the Landlord. The set amount of rent, as agreed to between the parties, was \$1,000 per month, payable on the first of each month. The Tenant paid a \$500 security deposit at the start of the tenancy. The tenancy started on April 15, 2021.

The Landlord confirmed the basic terms of the agreement. They acknowledged there was no paper copy of a tenancy agreement. This was because, from the Landlord's perspective, the Tenant was late paying the security deposit, and the Tenant initially stated they would only be staying a couple of months. The Tenant disagreed with this version of events as stated by the Landlord.

The Landlord issued the One-Month Notice on August 15, 2022. This set the end-of-tenancy date on September 15, 2022. A copy appears in the Tenant's evidence. The single reason provided on page 2 of that document is that the Tenant is repeatedly late paying rent.

The Landlord presented that the Tenant did not pay rent after August 2022 because the Tenant stopped paying rent. In the hearing, they described how the Tenant would pay one-half of the amount of required rent each month. This meant each subsequent payment was paying out the balance remaining from the prior calendar month. By the time August came, according to the Landlord, the Tenant paid \$500 towards August 2022 rent, then another second payment of \$500 which they accepted as delayed payment on the July 2022 rent amount still owing.

The Tenant acknowledged paying \$500 in the month of August. The Tenant then stated they did not pay rent for any of the months of September, October, November, and December 2022, and January 2023.

The Tenant also described paying the rent in two portions each month, since the start of the tenancy which the Landlord appeared to not have a problem with. They stated this was "never an issue until I started holding rent back because of repairs, toilet, heaters, smoke detectors, windows. . ."

In their evidence the Landlord provided copies of their text messages to and from the Tenant, showing their reminders and queries on each months' rent payment. This includes the following messaging:

- August 4, 2021: the Tenant asked on whether they had sent this monthly rent, and the Landlord responded to say they did not see it. The Tenant stated they would pay \$500 from one of their bank accounts, and then later that same evening pay the remainder from a separate account.
- September 7, 2021: the Landlord states "did you forget to pay rent?" and the Tenant claimed it was on auto-payment.
- September 8, 2021: the Landlord further inquired on this months' rent, then the Tenant stated "will make sure you have it today" On the following day, September 9, the Tenant stated "might be a bit of a delay".
- September 28, 2021: the Landlord received \$500 via etransfer – as indicated on this etransfer this is "half October 2021 rent"
- May 3, 2022: the Landlord inquires on \$500 not paid from the previous month

- May 6, 2022: the Landlord inquired again on a full rent amount, with the Tenant stating the rent would come either “tomorrow or Monday”
- May 12, 2022: the Landlord stated to the Tenant that they had not paid half the rent from the previous month.
- May 13, 2022: the Landlord noted a couple of more days’ though “if you can’t I will give you eviction notice”
- May 25, 2022: the Landlord inquired on payment of rent and the Tenant responded to say their pay was not deposited as it should have been. On this date the Tenant mentioned issues with their stove and windows.
- August 9, 2022: the Landlord inquired on rent from July 2022 and the present month of August 2022.
- August 11, 2022: the Landlord informed the Tenant they would serve the One-Month Notice
- August 17, 2022: the Tenant informed the Landlord that “my hold is still on my cheque” at the bank.

In the hearing, the Tenant described the various problems within the rental unit. The Landlord would not attend to fix things unless there was a possibility that items would affect the business below the rental unit, such as a water leak. A family member of the Landlord would typically arrive and provide inadequate repairs. The Tenant cited the example of the toilet, which continues to leak and was subject to messy work, with sealant all over the bathroom floor. The Tenant also listed issues with the kitchen faucet, broken fridge shelves, a replacement oven that now is not working.

The Tenant queried: “how does [the Landlord] continuously want people to pay rent” and “everything is still not working.” The Tenant stated that they said to the Landlord: “you have no concern about repairs” and that when it comes to these repairs it’s not safe. The Tenant also provided that neighbouring building residents also had concerns about repairs as well.

The Landlord spoke to the issue of an installed cat door on the main entrance door to the rental unit. They claimed \$400 in the cost for this damage. The Tenant stated this pet door was there when they initially moved into the rental unit, installed by a previous Tenant.

In sum, the Landlord provided that the Tenant is owing full rent for each of the months of September 2022 through to January 2023. The Landlord maintained that they received no rent for the month of August.

Analysis

The parties agreed on the basic terms of the tenancy agreement: the rent amount of \$1,000, payable on the first of each month. I therefore find this basic term to be fact. I also find the Tenant paid a security deposit amount of \$500 at the start of the tenancy.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (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 of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if “(b) the tenant is repeatedly late paying rent.” A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the One-Month Notice on August 15, 2022. The Tenant appears to have not paid rent after this. The Landlord provided a copy of their messages to the Tenant, up to mid-August 2022. I find this does not show a pattern of the Landlord fully accepting split monthly rent payments. The Landlord mentioned the possibility of an eviction notice in May 2022, and then again in August 2022. I do not accept the Tenant’s statement that the split payments for rent was not a problem until they started withholding rent because of non-repairs in the rental unit. I find the Landlord having to ask on rent on a near-monthly basis, and certainly with a high degree of frequency, means the Tenant was repeatedly late paying rent. I find this is justification for the Landlord ending the tenancy in the manner set out in s. 47(1)(b). Therefore, I conclude that the One-Month Notice, as issued by the Landlord on August 15, 2022, is valid.

I find the Tenant did not have a right under the *Act* to deduct any part of, or all, of the rent amount. That right can only be set by order of an arbitrator through a dispute resolution proceeding, under s. 72(2) of the *Act*.

I dismiss the Tenant’s Application for a cancellation of the One-Month Notice. I find the reason for the Landlord issuing the One-Month Notice was valid.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession. On my review, I find the One-Month Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession. The tenancy will end imminently for this reason.

The Tenant fully acknowledged not paying rent for the subsequent months, September 2022, through to January 2023. This is a breach of s. 26 of the *Act*, set out above. This was not the reason for the Landlord issuing the One-Month Notice on August 15, 2022; however, I find this is justification for the Landlord wanting to end the tenancy. In any event, non-payment of rent in a significant number of consecutive months has ensued, and, in conjunction with the One-Month Notice, warrants an end to this tenancy.

In their Application, the Landlord applied for rent amounts owing from the Tenant. At the time of their Application on October 5, 2022, this amount was \$1,500, for the half-month of August 2022, and the full month of September 2022.

For the month of August 2022, the Landlord did not provide an accurate account of what they received for rent payments in that month. In the hearing the Tenant appeared to contradict what the Landlord stated. The Landlord did not provide a record of rent received, such as a ledger or other accounting sheet for this tenancy. Because of this inaccuracy, with the burden of proof here resting with the Landlord, I cannot grant the Landlord any amount of rent for the month of August. The testimony in the hearing was too confusing, and there is no documentary evidence of the rent ledger for this tenancy.

Given the Tenant's statement in the hearing – that they withheld rent in subsequent months for the reasons of repairs in the rental unit – I find the Landlord is properly owed rent amounts for the following months. This is the full amount of rent for September 2022 through to January 2023. The *Rules of Procedure* Rule 4.2 allows for an amendment to an application at the hearing stage, "such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made".

In line with this, I amend the Landlord's Application, and I grant the Landlord \$5,000 for rent amounts owing for the time period in which the Tenant has not paid rent. By s. 67 of the *Act*, I grant the Landlord an award for compensation of \$5,000 for rent amounts owing.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$5,000. After setting off the \$500 security deposit, there is a balance of \$4,500. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$4,500 as compensation for the September 2022 through to January 2023 rent amounts.

The validity of the separate 10-Day Notice issued by the Landlord is not at issue. I dismissed this part of the Tenant's Application because of service for this hearing. I note there was no complete copy of the 10-Day Notice in the evidence.

The Landlord made a separate claim for \$400 for damage to the door in the rental unit. There is no evidence of this damage, and no record of the Landlord repairing this or seeking a quote for the amount of repair. The burden lies with the Landlord to prove this damage, the expense to them, and whether the Tenant caused such damage. I dismiss this piece of the Landlord's claim for lack of proof on all three of these pieces.

The Tenant was unsuccessful on both of their Applications; therefore, I make no award for reimbursement of the Application filing fees to them.

The Landlord was successful on their Application; therefore, I grant reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, with leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I dismiss the Tenant's Application for cancellation of the One-Month Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$4,600, pursuant to s. 67 and s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file

this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

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

Dated: January 17, 2023

Residential Tenancy Branch