



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants’

application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent (the "landlord") testified that the tenant had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent payable up to and including January 2023. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began near the middle of 2016. The current monthly rent is \$1100.00 payable on the 1st day of each month. The tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated August 15, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$6500.00 which was due on August 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice. The parties confirmed that the tenant received this 10 Day Notice on August 18, 2022.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenant since.

The landlord's amended monetary claim is for outstanding rent in the total amount of \$12,000.00. The landlord submitted a ledger of the outstanding rent balance dating back to March 1, 2022.

The tenant acknowledged receipt of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant testified that he has withheld rent payments as the landlord has illegally raised his rent over the years. The tenant testified that his original rent at the start of the tenancy was only \$600.00.

The landlord denied the tenant's allegation of the illegal rent increases and testified the rent has always been \$1100.00, hence the \$550.00 security deposit which equates to half the monthly rent.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

The tenant did not provide any evidence in support of the allegation of illegal rent increases. Neither party submitted a formal tenancy agreement to demonstrate the original rent amount. On a balance of probabilities, I accept the landlord's testimony that the original rent was \$1100.00 which lines up with the amount of the security deposit. In either event, the proper remedy for the tenant would have been to file an application to dispute any illegal rent increases rather than arbitrarily start withholding all rent payments.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1100.00 but failed to pay rent for the period of March 1, 2022 through to January 2023. I accept the landlord's claim for outstanding rent of \$12,000.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$12,100.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$12,100.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 06, 2023

Residential Tenancy Branch