



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP, LAT, OLC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution. The participatory hearing was held, via teleconference, on January 5, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Tenant stated he served the Landlord with his Notice of Dispute Resolution Proceeding by email. However, the Landlord stated he did not receive it. Rather, the Landlord stated he received the Notice of Dispute Resolution Proceeding from the RTB on December 21, 2022. The Landlord was willing and able to proceed regardless. The Landlord did not provide any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenant was seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues the Tenant applied for, and based on the evidence before me, I find the most pressing and related issues in this application is related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in the Tenant's application with the exception of the following grounds:

- I want to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities

Issues to be Decided

- Should the 10 Day Notice to End Tenancy (the Notice) be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The parties confirmed that monthly rent is set at \$2,000.00 per month, and is due on the first of the month. The tenancy started in July 2022, and the Tenant paid rent for that month, when he moved in.

The Tenant stated he was not happy with the condition of the rental unit, and states that the Landlord failed to provide many items that were promised. However, the Tenant did not explain what the problem was specifically.

The Landlord explained that the Tenant paid rent for July, but failed to pay any rent for August. As such, on August 3, 2022, he posted the Notice to the Tenant's door, for unpaid August rent in the amount of \$2,000.00. The Tenant acknowledged receipt of the Notice this same day. The Landlord stated that no rent has been paid since that time.

The Tenant stated he believes the Landlord owes him money for July 2022 rent because the rental unit was not acceptable for him.

The Landlord stated that the Tenant owes 6 months rent, for August 2022 – January 2023, totalling \$12,000.00.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does

not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I find the 10 Day Notice was received by the Tenant on August 3, 2022, the day he acknowledged receiving it. Further, the undisputed testimony of both parties is that rent was not paid when due on August 1, 2022. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent, without sufficient basis under the *Act*.

I note the Tenant feels the rental unit did not live up to his standards and he feels the Landlord failed to deliver “so many things”. However, I find there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent. As such, I find that the Tenant’s Application is dismissed.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.

(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.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant’s application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the

requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued on August 3, 2022, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. This order will be effective 2 days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord testified that the Tenant has not paid any rent for August 2022 – January 2023 (6 Months). There is no evidence the Tenant had any right to withhold or deduct money from rent, and I find the Landlord is entitled to a monetary order for these amounts, as they remain unpaid. The Landlord is entitled to a monetary order of \$12,000.00.

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$12,000.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 6, 2023