



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, DRI, LRE, OLC, OT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated October 05, 2022 (the October 05 Notice) and November 08, 2022 (the November 08 Notice), pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to dispute a rental increase, pursuant to section 43;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62.

I note that sections 55(1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – named Landlord

The landlord corrected the spelling of his first name.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to correct the spelling of the landlord’s first name.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notices to end tenancy for unpaid rent and the continuation of this tenancy and the dispute of a rental increase are not sufficiently related to any of the tenant’s other claims to warrant that they be heard together.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except the cancellation of the notices to end tenancy and the dispute of a rental increase which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. cancellation of a rental increase?
2. cancellation of the October 05 and November 08 Notices?

If the tenant’s application is dismissed, is the landlord entitled to an order of possession and a monetary order?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "evidence must be presented by the party who submitted it".

Both parties agreed the ongoing tenancy started in October 2016. Monthly rent is due on the first day of the month. The landlord collected and currently holds a security deposit (the deposit) in the amount of \$675.00.

The tenant submitted into evidence a tenancy agreement signed on October 27, 2018 stating on page two of RTB form 1 that monthly rent is \$1,400.00. The tenant also submitted a second copy of the tenancy agreement indicating on page two of RTB form 1 that monthly rent is \$1,450.00. The tenant affirmed she only signed the tenancy agreement that indicates monthly rent is \$1,400.00 and she never agreed to pay monthly rent above this amount.

The tenant stated that on October 01, 2019 she started paying rent in the amount of \$1,450.00. The landlord testified the tenant started paying monthly rent in the amount of \$1,450.00 on November 01, 2019.

Both parties agreed the tenant started paying monthly rent in the amount of \$1,500.00 on January 01, 2022. The tenant paid this amount until October 2022 and did not pay rent in November and December 2022 and February 2023. The tenant paid \$1,400.00 on January 01, 2023.

The landlord said he did not serve a notice of rent increase and the parties did not sign a document agreeing to a rent increase because he can not contact the tenant.

Both parties agreed the landlord attached the October 05 Notice to the tenant's front door and the tenant found it on October 05, 2022. The tenant submitted this application on October 11, 2022.

Both parties agreed the landlord attached the November 08 Notice to the tenant's front door and the tenant found it on November 08, 2022. The tenant submitted an amendment to dispute the November 08 Notice on November 24, 2022.

The tenant affirmed that both Notices were served only with the first page. The tenant submitted into evidence the first page of the November 08 Notice. The landlord stated he served both Notices with all the pages.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. **For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.**

(emphasis added)

Rent Increase

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

43 (1)A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

The landlord is subject to section 43(1) of the Act.

In accordance with section 22 of the Regulation (<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>), the maximum allowable rent increase was:

- 2% for 2023
- 1.5% for 2022
- 0% for 2021
- 2.6% for 2020
- 2.5% for 2019
- 4% for 2018

I accept both parties' uncontested testimony and the signed tenancy agreement that the parties agreed in writing on October 27, 2018 that monthly rent is \$1,400.00.

I accept both parties' uncontested testimony that the landlord did not serve a notice of rent increase and the parties did not agree in writing to a rent increase after they agreed that rent is \$1,400.00.

Considering the above, I find that monthly rent is \$1,400.00.

The landlord may serve a notice of rent increase (RTB form 7) in accordance with section 88 of the Act. One possible way to serve a notice of rent increase is mailing it via registered mail to the rental unit's address, in accordance with section 88(c) of the Act.

Cancellation of the October 05 Notice

Based on the undisputed testimony, I find the tenant received the October 05 Notice on October 05, 2022, in accordance with section 88(g) of the Act.

The tenant submitted this application on Tuesday, October 11, 2022. I note that October 10, 2022 was a statutory holiday.

Section 46(4)(b) of the Act states the tenant may dispute the notice to end tenancy in five days.

The Rules of Procedure state that “If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open”

Thus, I find the tenant’s application was submitted within the deadline established by section 46(4)(b) of the Act.

Section 52 of the Act states:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid.

As a copy of the Notice was not submitted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. I find the landlord failed to substantiate the Notice.

As such, I cancel the October 05 Notice.

Cancellation of the November 08 Notice

Based on the undisputed testimony, I find the tenant received the November 08 Notice on November 08, 2022, in accordance with section 88(g) of the Act.

The tenant submitted an amendment to dispute the November 08 Notice on November 24, 2022.

I find the tenant disputed the November 08 Notice after the deadline established by section 46(4)(b) of the Act.

However, the tenant submitted a partial copy of the November 08 Notice into evidence, containing only page one. A notice to end tenancy for unpaid rent (form RTB 30) contains three pages.

As a complete copy of the Notice was not accepted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. The landlord must submit a complete copy of the notice to end tenancy so the arbitrator can confirm its compliance with section 52 of the Act.

Section 55(1) of the Act states:

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.

Section 55(1.1) of the Act states:

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

As I cannot confirm if the November 08 Notice complies with section 52 of the Act, I cannot issue an order of possession or a monetary order.

I note that I am not making any findings about the merits of the October 05 and November 08 Notices. The landlord is at liberty to serve a new notice to end tenancy for unpaid rent and to seek an order of possession.

Conclusion

Monthly rent is \$1,400.00.

The October 05 Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Sections 55(1) and (1.1) do not apply to the November 08 Notice.

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: February 06, 2023

Residential Tenancy Branch