



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNR, MNRT, RR, RP
Landlords: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 14, 2022 (the "10 Day Notice") pursuant to section 46;
- a Monetary Order of \$9,006.94 for the cost of emergency repairs that Tenant made during the tenancy pursuant to section 33;
- an order to allow the Tenant to reduce rent by \$800.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order for the Landlord to make repairs to the rental unit pursuant to section 32.

This hearing also dealt with the Landlords' cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to section 55;
- a Monetary Order of \$800.00 for unpaid rent pursuant to section 55; and
- authorization to recover the Landlords' filing fee from the Tenant pursuant to section 72.

The Landlords attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing, the Landlords were represented by legal counsel EC. The Landlords called two witnesses, JG and VS, who gave affirmed testimony.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access

code had been provided in the notices of dispute resolution proceeding. I used the teleconference system to confirm that the Landlords' participants and I were the only ones who had called into the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the Tenant's notice of dispute resolution proceeding package (the "Tenant's NDRP Package"), but noted that it was not properly served. I find the Landlords were sufficiently served with the Tenant's NDRP Package pursuant to section 71(2)(c) of the Act.

VS testified that the Landlords' notice of dispute resolution proceeding package and evidence were attached to the Tenant's door on November 19, 2022. I note that an application by a landlord for an order of possession may be served by attaching to the door under section 89(2)(d) of the Act. However, other applications for dispute resolution not specifically referenced in section 89(2), including those with claims for unpaid rent or monetary compensation, may not be served by attaching to the door under section 89(1) of the Act. Documents such as evidence may be served by attaching the door under section 88(g) of the Act. Therefore, I find the portion of the Landlords' application claiming unpaid rent was not served in accordance with the Act. I find the remainder of the Landlords' application and the Landlords' evidence, to be served in accordance with sections 89(2)(d) and 88(g) of the Act. Pursuant to section 90(c) of the Act, the Tenant is deemed to have received those documents on the third day after attaching to the door, or November 22, 2022.

I note that nothing turns on this service issue since any unpaid rent that is found owing may be awarded to the Landlords under the Tenant's application to dispute the 10 Day Notice pursuant to section 55(1.1) of the Act.

Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

Since the Tenant did not attend for her own application while the Landlords duly attended, I order that all of the Tenant's claims, other than to dispute the 10 Day Notice, be dismissed without leave to re-apply.

The Landlords confirmed that an Order of Possession was already granted by consent in a previous proceeding (file number referenced on the cover page of this decision), effective March 15, 2023. I understand the Landlords are not seeking another Order of Possession at this time.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement of their filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on September 1, 2021 and is month-to-month. Rent is \$800.00 due on the first day of each month. The Tenant did not pay any security deposit. There is no written tenancy agreement.

A copy of the 10 Day Notice has been submitted into evidence. It has an effective date of October 24, 2022 and states that the Tenant failed to pay \$800.00 due on October 1, 2022. The Landlords confirmed that a copy of the 10 Day Notice was given in person to the Tenant on October 14, 2022.

The Landlords confirmed that the Tenant had not paid any rent since September 2022. VS explained that she had prepared the 10 Day Notice and misunderstood the calculation, so the unpaid September rent was not included.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 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.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content. I find the omission of unpaid September 2022 rent to not affect the validity of the 10 Day Notice. I accept the Landlords' undisputed testimony that this amount was owing and had been inadvertently omitted. I find that in any event, it would have been known to the Tenant and it would therefore be reasonable to amend the 10 Day Notice to include this amount under section 68(1) of the Act.

Based on the Landlords' testimony and the Tenant's application which acknowledges receipt of the 10 Day Notice on October 14, 2022, I find the Tenant was served with the 10 Day Notice on October 14, 2022 in accordance with section 88(a) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. In this case, the Tenant had until October 19, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the Residential Tenancy Branch indicate the Tenant's application was submitted on October 18, 2022. I find the Tenant's application was made within the time limit required by section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I accept the Landlords' undisputed testimony that the Tenant did not pay any rent since September 2022. I find there is no evidence to suggest that the Tenant had a legal right under the Act to withhold payment of rent to the Landlords.

Based on the foregoing, I find the Landlords have established the grounds stated in the 10 Day Notice. Accordingly, I dismiss the Tenant's claim to dispute the 10 Day Notice without leave to re-apply.

2. Are the Landlords entitled to recover unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

I find that as at the date of this hearing, or February 28, 2023, the Tenant owes unpaid rent to the Landlords for the months of September 2022 to February 2023, or \$800.00 x 6 months = \$4,800.00.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlords \$4,800.00 in unpaid rent.

3. Are the Landlords entitled to reimbursement of their filing fee?

The Landlords have established that the Tenant failed to pay rent as stated in the 10 Day Notice. I award the Landlords reimbursement of their filing fee under section 72(1) of the Act.

The Monetary Order granted to the Landlords is calculated as follows:

Item	Amount
Unpaid Rent to Date of Hearing (\$800.00 x 6 months)	\$4,800.00
Filing Fee	\$100.00
Total Monetary Order	\$4,900.00

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

Pursuant to sections 55(1.1) and 72(1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$4,900.00**. This Order may be served on the Tenant, filed in the Provincial Court of British Columbia, 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: March 01, 2023

Residential Tenancy Branch