



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910074535: CNR, CNC, OLC, FFT
File #110075659: OPR-DR, MNR-DR, FFL

Introduction

The Tenant seeks the following relief under the Residential Tenancy Act (the “Act”):

- an order pursuant to s. 46 and 62 to cancel a 10-Day Notice to End Tenancy signed on June 4, 2022 (the “10-Day Notice”);
- an order pursuant to s. 47 and 62 to cancel a One-Month Notice to End Tenancy signed on May 24, 2022 (the “One-Month Notice”);
- an order pursuant to s. 62 that the Landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

The Landlord files its own application seeking the following relief under the Act:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- a monetary order for unpaid rent pursuant to s. 67; and
- return of its filing fee pursuant to s. 72.

This matter was originally heard on October 17, 2022 but was adjourned to today’s date as there was insufficient time to complete the hearing at that time. As noted in my interim reasons, the Landlord had completed its submissions and the Tenant had not commenced her submissions at the end of the October 17, 2022 hearing.

S.H. appeared as agent for the Landlord. The Tenant did not attend the reconvened hearing, nor did someone attend on her behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 9:41 AM without submissions from the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the October 17, 2022 hearing, the parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Tenant's Claims

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In this instance, the primary issue is whether the tenancy will continue, or end, based on the notices to end tenancy. Indeed, if the tenancy were to end, no order under s. 62 would be granted given the order would be moot at that point.

At the hearing, the Tenant mentioned she sought a monetary award. However, no claim or amendment for this was filed such that it is not properly before me. As per rule 2.2 of the Rules of Procedure, claims are limited to what is stated in the application.

In light of this, I find that the Tenant's claim under s. 62 of the *Act* is not sufficiently related to the primary issues in the applications, being the enforceability of the One-Month Notice, the 10-Day Notice, and the issue of unpaid rent. Given, this I sever the claim under s. 62 pursuant to Rule 2.3 of the Rules of Procedure. If the tenancy shall

continue, the claim will be dismissed with leave to reapply. If the tenancy is over, the claim will be dismissed without leave to reapply.

Preliminary Issue – Style of Cause

Policy Guideline #43 provides guidance with respect to the naming of parties, specifying that legal names are to be used. The applications in question have different naming for the Landlord and the Landlord names itself as S.H.. I note that the notices to end tenancy list a management company and partnership and the tenancy agreement simply lists the partnership.

I enquired who, in fact, was the Landlord. I am advised that the partnership owns the building, the management company looks after the building, and that S.H. is merely an employee. The Landlord's agents confirm the partnership, as listed in the tenancy agreement, is the Landlord. In the interest of ensuring the parties are properly named, I amend the style of cause for both applications to reflect the naming of the parties as listed in the tenancy agreement, which I understand is the owner and Landlord for the property. The management company is merely acting as its agent.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) Is the One-Month Notice enforceable?
- 3) Is the Landlord entitled to an order of possession?
- 4) Is the Landlord entitled to an order for unpaid rent?
- 5) Is either party entitled to their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 29, 2018.

- Rent of \$1,494.00, which includes a fee for 2 parking stalls, is due on the first of each month.
- The Tenant paid a security deposit of \$675.00 and a pet damage deposit of \$675.00.

I am provided with a copy of the tenancy agreement.

The Landlord's agent advises that the 10-Day Notice was served on the Tenant by posting it to her door on June 4, 2022. The Tenant acknowledges receipt of the 10-Day Notice on June 4, 2022.

Both parties provide a copy of the 10-Day Notice. It lists that the Tenant failed to pay rent of \$1,494.00 on June 1, 2022. The Landlord's agent advises that the Tenant did not make payment on June's rent and also failed to pay rent on August 1, 2022. I am provided with a copy of a rent ledger prepared by the Landlord with respect to this tenancy as proof of the payment history. At the reconvened hearing, the Landlord's agent further stated that the Tenant had failed to make rent payment for only June and August 2022 and that no partial payments for those months have been received such that they are still owed in full.

The Landlord's agent further advised that the One-Month Notice was served on the Tenant by posting it to her door on May 24, 2022. The Tenant acknowledges receiving the One-Month Notice on May 24, 2022.

I am provided with a copy of the One-Month Notice by the parties. It lists that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Landlord describes the cause in the One-Month Notice as follows:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s): [REDACTED] HAS BEEN VERBALLY ABUSING ME AND MY STAFF SINCE WE ([REDACTED]) BOUGHT THE BUILDING IN 2018. Today May 24th/2022 at Roughly 11AM She came down to the office SCREAMING at me about a note I posted on her door to schedule a meeting regarding her concerns. She refuses to meet with me. One of my staff was taking her DOG out Down the Stairwell on Her Day OFF and [REDACTED] Started SCREAMING at her about everything. We will not tolerate any more abuse from Her. Posted One Month Notice to END tenancy May 24/22.

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I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

At the hearing, the Landlord's agent and witness described incidents in which the Tenant yelled at staff and called the Landlord's employee a nazi. I am advised by the Landlord's agent that the Landlord has taken to locking its office door due to concerns regarding the Tenant's interactions with staff members. I am told no warning letters were issued with respect to these incidents prior to the service of the One-Month Notice.

The Landlord's agent confirmed at the reconvened hearing that the Tenant continues to reside within the rental unit.

Analysis

The Tenant applies to cancel a 10-Day Notice and a One-Month Notice. The Landlord seeks an order of possession and an order for unpaid rent. Both seek the return of their filing fee.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

I accept that the 10-Day Notice was posted to the Tenant's door on June 4, 2022 and was received by the Tenant on the same date as acknowledged by her at the hearing. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 26(1) of the *Act*, 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 *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

In this instance, I am advised that the Tenant has failed to pay rent on June 1, 2022. I accept the undisputed evidence from the Landlord that the Tenant failed to pay rent on June 1, 2022 and failed to pay the overdue amount within 5 days of receiving the 10-Day Notice. The Landlord's rent ledger further demonstrates rent for June had not been paid. Based on the submissions made before me, I further accept that none of the exceptions listed above are applicable.

Accordingly, I find that the 10-Day Notice was properly issued by the Landlord. The Tenant's application to cancel the 10-Day Notice is dismissed. Further, I grant the Landlord an order of possession pursuant to the 10-Day Notice.

As the 10-Day Notice was upheld, I do not consider the details respecting the One-Month Notice. The claim to cancel the One-Month Notice is dismissed without leave to reapply as the tenancy is over.

With respect to the claim for unpaid rent, I accept the Landlord's undisputed evidence that the Tenant failed to pay rent for June 2022 and August 2022 such that total arrears are \$2,988.00 (\$1,494.00 x 2). I find that the Landlord is entitled to this amount. Pursuant to s. 72(2) of the *Act*, I order that the security deposit and pet damage deposit, totalling \$1,350.00, be retained by the Landlord in partial satisfaction of the amount owed by the Tenant as unpaid rent.

As the Tenant was unsuccessful in her application, I dismiss her claim for the return of her filing fee without leave to reapply.

As the Landlord was successful in its application, I grant its claim for its filing fee. Pursuant to s. 72(1) of the *Act*, the Tenant shall pay the Landlord's \$100.00 filing fee.

Conclusion

The 10-Day Notice was properly issued under the *Act*. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

I make no findings with respect to the enforceability of the One-Month Notice as the issue is moot. As the tenancy is over, the Tenant's claim under s. 62 severed under Rule 2.3 of the Rules of Procedure is dismissed without leave to reapply.

The Landlord is granted an order of possession pursuant to s. 55 of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

The Landlord has established their claim for unpaid rent totaling \$2,988.00. Pursuant to s. 72(2) of the *Act*, I order that the Landlord retain the security deposit and pet damage deposit, totalling \$1,350.00, in partial satisfaction of the unpaid rent claim.

I dismiss the Tenant's claim for her filing fee under s. 72(1) of the *Act* without leave to reapply.

I grant the Landlord's claim for its filing fee under s. 72(1) of the *Act*. The Tenant shall pay the Landlord's \$100.00 filing fee.

Taking the amounts above into account, I order that the Tenant pay **\$1,738.00** to the Landlord (\$2,988.00 + \$100.00 - \$1,350.00).

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme 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 03, 2023

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