



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNRT, MNDCT, RP, PSF, LRE, OLC
OPU, MNRL-S, MNDL-S, FFL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day 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 of the *Act*;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The tenants attended with the translator LC (“the tenant”). The landlord attended with the translator CT (“the landlord”).

All parties had opportunity to provide affirmed testimony, present evidence and make submissions.

Service

No issues of service were raised.

I find each party served the other in compliance with the Act.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Preliminary Issues

Preliminary Issues are addressed:

1. Granting Order of Possession

2. Amendment to landlord's claim
3. Severance of claims
4. Dismissal of claim with leave to reappl
5. Settlement discussions

Preliminary Issue 1 – Granting Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

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.

The landlord requested an Order of Possession.

Preliminary Issue 2 - Amendment

The landlord requested an amendment to their claim to reflect current outstanding rent in the amount of **\$7,000.00**.

The landlord clarified their claim for a monetary award as follows:

ITEM	AMOUNT
Outstanding rent	\$7,000.00
Filing fee	\$100.00
(Less security deposit)	(\$2,500.00)
TOTAL MONETARY ORDER REQUESTED	\$4,600.00

The landlord testified the 10 Day Notice was dated and served February 3, 2023. Since then, rent for the month of March 2023 has been unpaid. The landlord also claimed.

I granted the landlord an amendment to their claim to increase the amount requested as outstanding rent as the application was brought in February 2023 and rent for March 2023 has not been paid.

Preliminary Issue 3 – Severance

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's 10 Day Notice.

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

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for the application to dispute the landlord's Notice are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

Preliminary Issue 4 – Claim for Utilities

The landlord submitted copies of BC Hydro invoices and claimed the tenant was in arrears which the tenant denied. The landlord requested a monetary award.

I was unable to determine the current amount of the utility bills owing based on the invoices submitted.

I accordingly grant the landlord leave to reapply for compensation for outstanding utilities owed by the tenant.

Preliminary Issue 5 - Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties several times throughout the lengthy hearing. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I endeavoured to assist the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice? Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

This is an application by a landlord for an Order of Possession pursuant to a 10 Day Notice. The tenant applied to cancel the 10 Day Notice.

Considerable testimony was submitted in a lengthy hearing of 105 minutes. Both parties submitted substantial documentary evidence and lengthy testimony.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Tenancy

The landlord submitted a copy of the tenancy agreement signed by both parties. The parties agreed to the following:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	yes
Type of Tenancy	Fixed term
Beginning Date	August 1, 2022
Fixed Term End Date	August 1, 2024
Vacancy Date	ongoing
Rent payable on first of month	\$2,500.00
Security deposit	\$2,500.00
Pet deposit	no

10 Day Notice

The landlord submitted a copy of a 10 Day Notice and the parties agreed as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	February 3, 2023
Effective Date of Notice	February 13, 2023
Date and Method of Service	Personal
Effective Date of Service	February 3, 2023
Reasons for Issuance	\$3,000 owing rent
Application for Dispute Resolution filed - date	February 6, 2023

The parties agreed the tenant stopped paying the full amount of rent on January 1, 2023.

Rent

The parties agreed the tenant paid rent as follows:

ITEM	AMOUNT PAID	LANDLORD CLAIM OWING
Rent January 2023	\$500.00	\$2,000.00
Rent February 2023	0	\$2,500.00
Rent March 2023	0	\$2,500.00
TOTAL	\$500.00	\$7,000.00

The landlord expressed many complaints about the tenant's conduct in the tenancy. They alleged the tenant had many pets when the agreement prohibited pets and no pet deposit was paid.

The landlord requested authorization to apply the security deposit of \$2,500.00 to the Monetary Order for outstanding rent.

The landlord also requested reimbursement of the filing fee.

Tenant's Position

The tenant acknowledged the landlord's evidence regarding the background of the tenancy, the amount of rent paid and the details of the 10 Day Notice were correct..

The tenant provided testimony about conditions of the unit requiring repairs which the landlord failed to repair. Because of this, the tenant testified they reduced the rent paid on January 1, 2023 and each month thereafter and the landlord is not entitled to any more.

The tenant stated they have not brought an application for repairs or for a reduction in rent.

Landlord's Position

The landlord testified they did not consent to the rent reduction.

The landlord submitted a copy of a text (undated) from the landlord to the tenant from February 2023 stating:

Hello, I am still missing rent from the previous months that you did not pay. You still need to pay a total of \$3,000.00 fro the missing rent from January and February[2023]. In January the rent paid was \$500.00 short and February was not paid.

A copy of the tenant's reply was submitted:

I am hold a part of rent because you refused my request for emergency repairs, I might pay you nothing next month because I need to emergency repair the water and ceilings etc.

Analysis

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.

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I find the landlord's 10 Day Notice complied with section 52 of the Act. The Notice was in the RTB form and the tenant acknowledged receipt as set out earlier.

I accept the landlord's testimony and supporting evidence and find the tenant owes **\$7,000.00** in outstanding rent. The tenant acknowledged the amount they paid to which the landlord testified was correct. I find the landlord did not agree to a rent reduction. I find the tenant reduced the amount of rent paid without the landlord's consent.

A tenant is required to pay rent when due.

Section 26(1) states (added emphasis):

26 (1) 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.

Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes **\$7,000.00** to the landlord for outstanding rent as claimed. The tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and I have dismissed the tenant's application, I must grant the landlord an Order of Possession.

Thus, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord has been successful, I grant the landlord an award for reimbursement of the filing fee.

I grant the landlord authorization to apply the security deposit to the award.

I grant the landlord a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent	\$7,000.00
Filing fee	\$100.00
(Less security deposit)	(\$2,500.00)
TOTAL MONETARY ORDER	\$4,600.00

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

Conclusion

I grant the landlord a Monetary Order of **\$4,600.00 which may be filed and enforced in the courts of the Province of BC.**

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

I grant the landlord leave to apply for outstanding utilities.

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 16, 2023

Residential Tenancy Branch