



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

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

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on January 3, 2023 (the “10-Day Notice”); and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

F.R. appeared as the Tenant. The Tenant was joined by her social worker A.A. and her community support liaison K.B.. H.L. appeared as the Landlord’s agent.

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.

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 – Style of Cause

Review of the materials provided to me shows that the tenancy agreement and the 10-Day Notice both list a numbered company as the Landlord. The Tenant, in her application, named two individuals, including H.L., as the Landlord.

Policy Guideline #43 provides guidance with respect to the naming of parties and specifies that the correct legal name of the parties ought to be used. I confirmed with the Landlord's agent whether the numbered company, as listed in the tenancy agreement, was the correct name for the Landlord. He confirmed that it was. I proposed correcting the style of cause on this basis and neither party raised objection to me doing so.

Accordingly, the style of cause is corrected to reflect the name of the Landlord as stated in the tenancy agreement.

Preliminary Issue – Tenant's Claims

The Tenant seeks an order that the Landlord comply with the *Act* pursuant to s. 62. Upon review of the Notice of Dispute Resolution, it was unclear to me what the Tenant was, in fact, seeking based on the description provided. I sought clarification with the Tenant on what issue she sought to address and I was told that the second claim was an extension of her claim to dispute the 10-Day Notice.

Given that the second claim under s. 62 appears to have been unnecessarily pled as per the Tenant's own submissions, this claim is dismissed without leave to replead.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an order for unpaid rent?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

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

- The Tenant moved into the rental unit on July 5, 2017.
- Rent of \$600.00 is due on the first of each month.
- A security deposit of \$300.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Tenant.

The Landlord's agent advises that the 10-Day Notice was served on the Tenant by posting it to her door on January 3, 2023. The Tenant acknowledges receipt of the 10-Day Notice, though cannot recall the specific date. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*.

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 am provided with a copy of the 10-Day Notice by the Tenant. 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date of the notice is incorrect though this issue is not relevant as it is corrected automatically by virtue of s. 53 of the *Act*.

The Landlord's agent advises that the Tenant failed to pay rent of \$600.00 in full over a significant period of time. The Landlord provides an accounting of the Tenant's rent payments in its evidence from June 2022 to December 2022 showing total arrears of \$1,917.00. The Landlord's agent confirms the rent accounting is correct and advises that the Tenant has paid \$600.00 in rent for January, February, March, and April 2023.

The Tenant does not dispute the payment history provided by the Landlord. However, she argues that she had an arrangement with the previous building manager whereby she would clean washrooms in the common areas and would have \$200.00 credited on her monthly rent payments. The Tenant says that this arrangement had been ongoing for approximately two years prior to her returning to full rent payments of \$600.00 in January 2023. The Landlord's evidence includes an attestation from the previous building manager saying there was no such arrangement. The Tenant says the previous manager's attestation is false and provides her bank records from January 1, 2020 to January 6, 2023 as proof of payments she made.

The payment history provided by the Tenant is largely consistent with her evidence that she paid \$400.00 in rent each month. It does not seem rational that the Landlord would permit the Tenant to deduct a third of her total rent payments for approximately two years unless there was, in fact, an agreement that she be permitted to do so. I accept that there was an arrangement whereby the Landlord agreed the Tenant deduct \$200.00 from rent in lieu of cleaning services provided by the Tenant.

However, that does not end the issue of unpaid rent. Even accepting that rent was payable in the amount of \$400.00 over the relevant period, the Landlord's records show that the Tenant was still in arrears on her rent payments. In particular, the Tenant paid no rent in August 2022, paid \$300.00 in September 2022, and \$375.00 in November 2022. The summary also shows an overpayment of \$8.00 from July 2022. I accept that the summary provided by the Landlord, as supported by the Tenant's own banking records, is accurate.

The Tenant says that she did not pay rent in August 2022 as she sought and was denied the Landlord's contact information as the building manager was not dealing a bed bug issue and an issue dealing with alleged harassment of the Tenant by another occupant at the building. E-transfer records provided to me by the Landlord also show the Tenant withheld \$100.00 from rent in September 2022 due to harassment and another \$25.00 in November 2022 due to harassment and an issue with the Wi-Fi.

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 money can be deducted from rent by a tenant, which are 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.

None of those are applicable here. I find that the Tenant was not permitted to withhold money from rent as she did, which is expressly prohibited by s. 26 of the *Act*. I further find that the Tenant was in arrears of rent totalling \$517.00 as of January 1, 2023 (\$400.00 + \$100.00 + \$25.00 - \$8.00).

I find that the Landlord has established that the 10-Day Notice was properly issued. I find that accounting of unpaid rent in the 10-Day Notice, though incorrect, is immaterial as the Tenant was on her own evidence in arrears on her rent payments. The Tenant's application cancelling the 10-Day Notice is hereby dismissed without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

I accept that this is a long-term tenancy. I was advised and accept that this is a single-room occupancy rental unit and that the Tenant has financial constraints. I am also provided with a medical certificate by the Tenant and accept that she is suffering from a

variety of medical conditions related to her physical and mental health. I further accept the undisputed evidence that rent of \$600.00 was paid in full as of April 1, 2023. Given these factors, I find that the effective date of the order of possession be set to April 30, 2023.

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. As set out above, I find that unpaid rent as of January 1, 2023 was shown by the Landlord to be \$517.00. I make note that the Tenant paid rent of \$600.00 on January 2, 2023, which is the day before the Landlord served the 10-Day Notice. This suggests that the Tenant suspended her cleaning services sometime in December 2022 such that she the arrangement was no longer in place as of January 2023. Accordingly, I do not grant the Tenant any credit on an overpayment of rent from January to April 2023 as the deduction of rent, premised on her cleaning common areas, ended sometime in December 2022.

Given this, I grant the Landlord an order for unpaid rent totalling \$517.00. I note that the Landlord holds the security deposit of \$300.00. Taking into account interest owed on the deposit of \$1.54, I order pursuant to s. 72(2) of the *Act* that the Landlord retain the security deposit and the interest in partial satisfaction of the arrears in rent. On balance, I order that the Tenant pay \$215.46 to the Landlord (\$517.00 - \$301.54).

Conclusion

I dismiss the Tenant's claim under s. 62 of the *Act* without leave to reapply.

I dismiss the Tenant's claim to cancel the 10-Day Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on April 30, 2023**.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$215.46** to the Landlord as unpaid rent.

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: April 06, 2023

Residential Tenancy Branch