



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”), pursuant to section 46 and 55;
2. a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
3. an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

JH appeared at the hearing as agent for the landlord. TB (the “tenant”) appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

Issue(s) to be Decided

Should the landlord’s 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 30, 2020. Monthly rent is \$750.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$375.00, which the landlord continues to hold in trust for the tenant.

JH testified that the landlord issued the 10-Day Notice to the tenant on February 10th, 2023, by posting it to the door of the rental unit. The tenant confirmed receipt of the same.

JH testified that the landlord issued the 10-Day Notice because the tenant did not pay rent for December 2022 and February 2023. JH testified that when the tenant failed to pay rent in December the tenant agreed to pay an additional \$100.00 per month starting on February 1st, 2023. The payments were to continue until the outstanding December rent was paid in full. However, JH testified that the tenant did not follow through with this agreement and failed to pay rent again in February. JH testified that since the 10-Day Notice was issued the tenant has not paid rent for March or April 2023.

The landlord is seeking an Order of Possession and Monetary Order in the amount of \$3,000.00 for unpaid rent.

The tenant did not dispute JH's testimony and agreed that they did not pay rent in December. The tenant also confirmed that they agreed to pay an additional \$100.00 per month starting in February; however, they did not do so. The tenant confirmed they have not paid rent for March or April 2023.

The tenant testified that she is seeking a Monetary Order because her right to quiet enjoyment was breached by the landlord. The tenant submitted that it is her understanding that JH provided the key to her rental unit to a woman and gave that woman permission to enter the unit and film her. The tenant testified that they have been told by people around town that the woman is monitoring them. The tenant further

noted that she believed that the landlord reported them to the police. The tenant testified that they don't have evidence to support that a woman has been monitoring them, but they have requested the RCMP files regarding the same.

JH denied having provided a key to the tenant's rental unit to a woman or anyone else. JH submitted that they contacted the RCMP on behalf of the tenant in an effort to assist the tenant with their concerns surrounding having been monitored in their unit. JH testified that they are shocked at the accusations made by the tenant against them. JH included a series of emails in their evidence which show the progress of the accusations made by the tenant against them.

Analysis

Based on the evidence and testimony of the parties, I find the tenant was served with the 10-Day Notice in accordance with the Act.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice.

The undisputed evidence of JH is that the landlord served the tenant with the 10-Day Notice because the tenant failed to pay rent in December 2022 and February 2023. Therefore, I find on a balance of probabilities that the 10-Day Notice was issued for a valid reason, namely the non-payment of rent.

The 10-Day Notice is included in the evidence. I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

Based on my findings, the landlord is entitled to an Order of Possession under section 55(1) of the Act which will be effective two days after service on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. The landlord's undisputed evidence is that rent is currently outstanding for the months of December 2022 and February, March, and April 2023 in the amount of \$3,000.00. The tenant is ordered to pay \$3,000.00 to the landlord.

The landlord continues to hold the tenant's security deposit of \$375.00 in trust for the tenant. In accordance with the off-setting provisions of section 72 of the Act, I order the

landlord to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

As this tenancy is ending, I find that the tenant's application for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 is moot. Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant's application for the landlord to comply with the Act, regulation or tenancy agreement.

The tenant applied for monetary relief based on section 67 of the Act. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the Residential Tenancy Branch Rules of Procedure, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. Policy Guideline #16 requires that the applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. In this case, the onus is on the tenant to prove their entitlement to the monetary claims sought.

I have considered the tenant's claim; however, I find that they have provided insufficient evidence to establish damage or loss. While the tenant may believe they have been monitored in their rental unit, the tenant has not provided any documentary or photographic evidence to substantiate this belief. Further, I find the landlord's response to the tenant's allegations reliable, persuasive and supported by her documentary evidence. As a result, I do not accept the tenant's claim that the landlord provided a third party a key to the tenant's rental unit or permitted a third party to enter the rental unit to film the tenant.

Based on the foregoing, I find that tenant's right to quiet enjoyment has not been breached. The tenant has not established a damage or loss and therefore I find that that they are not entitled to the monetary claim sought. The landlord's claims for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement based on section 67 of the Act are therefore, dismissed without leave to reapply.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service on the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$2,625.00 as follows:

Item	Amount
Rent Due December 2022 and February, March and April 2023 (4 x \$750.00)	\$3,000.00
Security Deposit	-\$375.00
Total Monetary Order	\$2,625.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 28, 2023

Residential Tenancy Branch