



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP, PSF, LRE, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant, the landlord and the co-owner of the subject rental property (the "co-owner") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

Both parties agree that the tenant served the landlord with the tenant's application for dispute resolution and evidence via registered mail. I find that the above documents were served in accordance with sections 88 and 89 of the *Act*.

The landlord did not submit evidence for consideration.

Preliminary Issue- Amendment

The co-owner testified to the landlord's correct first and last name. The tenant's application for dispute resolution listed the landlord's first name as his last name and his last name as his first name. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to list the landlord's first and last name in the correct order.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notice.

Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?

Evidence/Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on August 1, 2022 and is currently ongoing,
- monthly rent in the amount of \$2,400.00 is payable on the first day of each month,
- a security deposit of \$1,200.00 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The co-owner testified that the tenant was served with the Notice via posting on November 9, 2022. The tenant testified that she received the Notice on November 9, 2022. I find that the tenant was served with the Notice in accordance with section 88 of the *Act*.

The Notice was entered into evidence, is signed by the landlord, is dated November 9, 2022, gives the address of the rental unit, states that the effective date of the notice is November 20, 2022, is in the approved form, #RTB-30, and states that the tenant failed to pay rent in the amount of \$2,400.00 that was due on November 1, 2022. I find that the Notice meets the form and content requirements of section 52 of the *Act*.

The co-owner testified that the tenant was served the notice because she did not pay November 2022's rent in the amount of \$2,400.00. The co-owner testified that the tenant has not paid any rent from November 2022 to the date of this hearing, April 13, 2023.

The tenant testified that she paid November and December 2022's rent but has not paid any rent from January 2023 to April 2023. The tenant testified that she paid November and December 2022's rent in cash. The tenant testified that she does not recall the exact date that November 2022's rent was paid but believes it was around November 13, 2022.

The tenant testified that she doesn't recall if she withdrew cash from her bank account to pay the rent but that she works under the table and may have paid with that money. No banking records or any other record of rent paid was entered into evidence. The tenant testified that she doesn't deny she owes rent money but disagrees with the amount claimed by the landlord.

I find the tenant's testimony regarding the timeline and method of rent payment for November 2022 to be vague and unreliable. The tenant was unable to provide any specificity regarding the timing of rent or where the money for the alleged payment came from.

The tenant's application for dispute resolution states:

I moved into this unit on the 1st of August. I was supposed to move in with a roommate i paid 2 months rent up front and the damage deposit and my roommate never moved in. I have been struggling ever since. I have been trying to find a roommate and have applied for rental subsidy

The tenant's application for dispute resolution does not state that November 2022's rent was paid, but states that the tenant has been struggling to find a roommate and to pay rent, so she has looked for subsidies. I find on a balance of probabilities that had had the tenant paid November 2022's rent the same would have been stated on the application for dispute resolution, which was filed on December 5, 2022, well after November 13, 2022, the approximate date the tenant claims to have paid rent.

I accept the landlord's testimony regarding the payment of rent for November 2022 over that of the tenant because I find that the landlord's testimony is consistent with the documents before me and the tenant's testimony is not. I find, on a balance of probabilities, that the tenant did not pay November 2022's rent whatsoever.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* states that:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

As I have determined that the tenant did not pay November 2022's rent within five days of receiving the Notice and did not file to dispute the Notice within five days of receiving it, pursuant to section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on November 20, 2022, the effective date of the Notice. The tenant's application to dismiss the Notice is therefore dismissed without leave to reapply.

Sections 55(1) and 55(1.1) of the *Act* state:

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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Residential Tenancy Guideline #3 (PG #3) states:

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

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Under section 46(5) of the RTA (section 39(5) of the MHPTA), a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice if they do not pay the rent or make their application for dispute resolution within 5 days after receiving the notice to end tenancy. If the tenant submits their application late and the director does not extend the time limit under section 66 of the RTA (section 59 of the MHPTA), then the tenancy ended on the effective date of the notice to end tenancy. Only rent owing up until the effective date of the notice to end tenancy would constitute unpaid rent for the purpose of section 55 (1.1) of the RTA (section 48 (1.1) of the MHPTA).

Pursuant to section 55(1) of the *Act*, I find that since the Notice complies with section 52 of the *Act* and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

The tenant applied to cancel the Notice more than five days after she received it, did not pay the outstanding rent within five days of its receipt and did not file an application seeking an extension of the time limit for filing an application to dispute the Notice. As such, and pursuant to PG #3, I find that this tenancy ended on the effective date of the Notice, that being November 20, 2022. Only rent owing up until the effective date of the notice to end tenancy constitutes unpaid rent for the purpose of section 55 (1.1) of the RTA.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent from November 1-20, 2022 pursuant to the following calculation:

$\$2,400.00 \text{ (rent)} / 30 \text{ (days in November 2022)} = \$80.00 \text{ (per diem rent)}$

$\$80.00 \text{ (per diem rent)} * 20 \text{ (days tenancy ongoing in November 2022)} =$
\$1,600.00

The landlord is at liberty to file an application for dispute resolution seeking to recover damages for overholding from November 21, 2022 forward.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 issue a Monetary Order to the landlord in the amount of \$1,600.00 for rent from November 1-20, 2022.

The landlord is provided with this Order in the above terms and 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 17, 2023

Residential Tenancy Branch