



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR, CNC, MNDCT, LRE, OLC
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On January 6, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute a Ten-Day Notice to End Tenancy for Unpaid Rent (the “Ten-Day Notice”);
- to dispute a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- for compensation for monetary loss/other money owed
- to suspend or set conditions on the Landlord’s right to enter the rental unit
- for the Landlord’s compliance with the legislation/tenancy agreement.

On February 12, 2023 the Landlord applied for an order of possession of the rental unit, a monetary order for rent not paid, and their Application filing fee. The Landlord’s filed this Application as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there was an application by the Tenant previously in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 4, 2023. Both the Tenant and the Landlord attended the hearing.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the Notices to End Tenancy issued by the Landlord. The Tenant's Application referred to two end-of-tenancy notices issued by the Landlord.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice or the 10-Day Notice issued by the Landlord. By Rule 6.2, I do not consider the other issues raised by the Tenant on their Application: neither their claim for compensation, nor the Landlord's entry to the rental unit, nor the Landlord's compliance with the legislation/tenancy agreement. By Rule 2.3, these other issues are unrelated, and I amend the Tenant's Application to exclude them. I grant the Tenant leave to reapply on these other issues. This means they may file a new application to address these other issues, and this does not preclude proper consideration of the issues by another arbitrator.

Preliminary Matter – Tenant's Notice of Dispute Resolution Proceeding and evidence

Though the Tenant stated they sent the Notice of Dispute Resolution Proceeding, and their prepared evidence, to the Landlord via courier, the Landlord stated they received nothing from the Tenant about this hearing. It was only when the Landlord filed their own Application that they learned about that of the Tenant.

The Tenant stated it cost \$20 for them to send the information to the Landlord's address as provided on the 10-Day Notice. The Tenant did not provide proof of this delivery method, or other information in the evidence, though in the hearing they stated that they did.

The *Act* s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for each application to the respondent. I find the Tenant did not serve the Notice of Dispute Resolution Proceeding for their January 6 Application. The *Act* s. 89 gives the rules for service of an application for dispute resolution. Basically, this is by leaving a copy with the person or their agent, or sending a copy via registered mail.

For this reason, I dismiss the Tenant's January 6 Application. Because I am dismissing this Application, I make no consideration of any evidence the Tenant provided to the Residential Tenancy Branch for this matter.

Preliminary Matter – Landlord's evidence

The Tenant confirmed they received evidence prepared by the Landlord and delivered by packages left at the door of the rental unit.

The Landlord provided that they delivered the Notice of Dispute Resolution Proceeding for their Application, and their evidence for that Application and in response to the Tenant's Application by this method, witnessed by a neighbour.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* allows an arbitrator to direct a party to provide evidence after a hearing starts. I allowed the Landlord the opportunity to provide additional evidence; in particular, this was a copy of the One-Month Notice they issued to the Tenant on February 7, 2023. This was so I could verify key details on that document.

In the Tenant's Application, they refer to a One-Month Notice served on January 4, 2023, attached to their door. The One-Month Notice provided by the Landlord after the hearing concluded was dated February 7, 2023. I asked the parties specifically about this February 7, 2023 One-Month Notice in the hearing. The Tenant stated they did not receive any notice to end the tenancy from the Landlord in February.

The Tenant referred to a separate One-Month Notice, one that listed each tenant-in-common name of the people occupying the rental unit. In the hearing, the Landlord verified that there was a previous hearing in this matter. This was an expedited application to end the tenancy based on the Landlord's plea that a notice to end the tenancy for cause to take effect would be unreasonable. The Tenant described the One-Month Notice as listing four tenants. I find as fact that what the Tenant referred to

was this separate Application to end the tenancy for which the Landlord applied on January 18, 2023, listing the four tenants as respondents to that application. Another Arbitrator heard that matter on February 2, 2023 and made their decision on February 3, 2023.

As stated above, I accept the February 7 One-Month Notice in the Landlord's evidence for this hearing. If relevant, I give in consideration in my decision below.

Issues to be Decided

Is the Tenant entitled to cancellation of the 10-Day Notice?

Is the Tenant entitled to cancellation of the One-Month Notice?

If the Tenant is not successful, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

I set out only the background and evidence that is relevant to the analysis below that forms the basis for my final decision in this matter. There were other issues presented by the Tenant in the hearing; however, I find they were not related to the key issue herein. I describe, in this section, only the evidence and submissions relevant to my findings and decision below.

The Landlord described the arrangement in place for this tenancy. The Tenant here was subletting from a Tenant known to the Landlord; that earlier tenant vacated the rental unit. That earlier tenant was paying \$3,500 per month. On February 3, 2023, another arbitrator at the Residential Tenancy Branch found the Tenant here to be a "tenant-in-common" or one tenant sharing a common space, meaning they had a separate arrangement to pay rent directly to the Landlord independently, *i.e.*, not a co-tenant/roommate.

The Landlord learned of the Tenant living in the rental unit around September 2022. The Landlord received an amount of \$700 from the Ministry of Social Development for November 2023. The Landlord informed the Tenant of the \$750 need for the rent amount this was the amount paid by the other residents in the rental unit. According to the Landlord the Tenant stated they would make this change by updating social services.

The Landlord presented that they continued to receive \$700 until February 2023. In March, April, and May 2023 they received \$400 per month. At the time of the hearing, the Landlord stated this became “even less” because of this present scheduled upcoming hearing.

The Landlord presented a document titled “Monthly Breakdown of Rent on the 10-Day Notice to End Tenancy”, showing a log of month/date rent due, rent owing, amount of partial payments, and balance of rent owed.

In the hearing, the Tenant confirmed that in September they paid rent directly to the previously vacated tenant, then this became \$700 to the Landlord until January 2023. The Tenant stated they reduced this amount to \$400, “considering the conditions I am living in.” In March 2023, the Tenant stated the “rent went down to \$400.”

in the Landlord’s Application, they presented that they issued a 10-Day Notice to the Tenant on January 3, 2023, for the end-of-tenancy date of January 18, 2023. This was the same 10-Day Notice the Tenant filed an Application for on January 6, 2023. A copy of this 10-Day Notice is in the Landlord’s evidence for this hearing.

On page 2 of the document, the Landlord provided that the Tenant failed to pay rent in the amount of \$400 for January 1, 2023. This was a combination of rent amounts owing from the prior months: \$150 for each of September and October 2022; \$50 for each of November and December 2022. Also in their evidence, the Landlord provided a balance-owing sheet.

Relating to this 10-Day Notice, the Tenant in the hearing stated they provided \$700 each month to the Landlord for the last three months of 2022. They stated they reduced the amount of rent they pat to \$400 in March 2023, this because of the conditions they are living in at the rental unit.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (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 of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In the earlier hearing between the parties, the Arbitrator determined that the Tenant here was a “tenant-in-common”. I find the arrangement was in place for the Tenant to pay rent directly to the Landlord as required. I conclude, based on the parties’ testimony, and the Landlord’s fulsome description of the issue from their perspective, that the agreed-to rent amount was \$750 per month.

I find it more likely than not that the Tenant did not pay the full amount of rent each month as required. The *Act* s. 26 applies in this situation, and the Tenant had no authorization to withhold rent. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

Under s. 55 of the *Act*, when a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

I dismissed the Tenant’s Application above because of their lack of service of the Notice of Dispute Resolution Proceeding.

On my review, I find the 10-Day Notice served by the Landlord on January 3, 2023 complies with the s. 52 requirements of form and content; therefore, I find the Landlord here is entitled to an Order of Possession.

While the Landlord provided sufficient evidence, primarily in the form of their testimony in the hearing, that the Tenant was late paying the full amount of rent owing, I find they are not clear on the exact amount owing. Given that the Tenant admitted to paying less than the agreed-to amount of rent in the subsequent months, I find that it would be pre-emptive to grant compensation to the Landlord where the final amount is not clear in their evidence. Given the nature of this tenancy, and the witnesses’ description of

current affairs involving constant police presence, I find compensation to the Landlord for rent owing is not their paramount concern. I grant the Landlord leave to reapply on their claim for rent amounts owing from the Tenant.

The Landlord was successful; therefore, I grant reimbursement of the Application filing fee to them. I issue a Monetary Order to the Landlord for that exact amount. The Landlord may apply in a separate application for any rent amounts owing as of the date of the Tenant's last tenancy date.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

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, the Landlord may file this Order with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$100 for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. Should they choose, the Landlord may file this Monetary Order in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: May 6, 2023

Residential Tenancy Branch