



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC
OPR-DR, MNR-DR, FFL

Introduction

This was a cross application hearing that 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 dated January 5, 2023 (the "First 10 Day Notice"), pursuant to section 46; and
- cancellation of the One Month Notice to End Tenancy for Cause dated January 5, 2023 (the "One Month Notice"), pursuant to section 47.

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

- an Order of Possession for unpaid rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2023 (the "Second 10 Day Notice"), pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 26.

The tenant and two landlord agents ("agent KE" and "agent CG") 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.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Both parties agree that the correctly named landlord is landlord AW. The tenant's application for dispute resolution lists a different landlord. Pursuant to section 64 of the act, I amend the tenant's application to correctly state the landlord.

The landlord 's original application for dispute resolution claimed unpaid rent in the amount of \$2,300.00. Agent KE testified that the amount of rent outstanding since the landlord 's application for dispute resolution was filed has increased.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent.

Preliminary Issue- Service

Both parties agreed that they were served with the others application for dispute resolution. I find that both parties were served in accordance with the Act.

The tenant testified that they did not submit and serve evidence.

Agent KE testified that the tenant was served with the landlord's evidence via registered mail on March 31, 2023 and April 13, 2023. The tenant testified that he received the

landlord's two evidence packages. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the tenant entitled to cancellation of the First 10 Day Notice, pursuant to section 46 of the Act?
2. Is the tenant entitled to cancellation of the One Month Notice, pursuant to section 47 of the Act?
3. Is the landlord entitled to an Order of Possession for unpaid rent pursuant to the Second 10 Day Notice and sections 46 and 55 of the Act?
4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 26 of the Act?

Background and Evidence

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 agents' claims and my findings are set out below.

Agent KE testified that this tenancy started on April 1, 2022 at a rental rate of \$1,100.00 due on the first day of every month. Agent KE testified that a rent increase was served on the tenant effective April 1, 2023 and that from April 1, 2023 onwards rent in the amount of \$1,122.00 was due on the first day of every month. The landlord entered into evidence a written tenancy agreement that was signed by both parties and confirms agent KE's testimony on the date the tenancy started and the rental rate.

The tenant testified that this tenancy started on February 1, 2022 at a rental rate of \$900.00 which increased to \$1,100.00 when the tenant was no longer employed by the landlord. The tenant testified that they were later given a notice of rent increase which increased the rent to \$1,122.00 effective April 1, 2023.

Agent KE testified that the tenant was never an employee of the landlord and that the tenancy started April 1, 2022. The tenant did not provide any documentary evidence to prove that rent was ever \$900.00 per month or that they were ever employed by the landlord. The landlord entered into evidence a ledger which states that the tenant's

move in date was April 1, 2022. The ledger shows accounting from August 1, 2022 to March 1, 2023. The ledger shows that rent payments made by the tenant in 2022 were in the amount of \$1,100.00.

Agent KE testified that the First 10 Day Notice and the One Month Notice (the "Notices") were posted on the tenant's door on January 5, 2023. The tenant testified that they were out of town at the time the Notices were served, and that they received them on or around January 10, 2023. The tenant filed to cancel the notices on January 8, 2023.

Agent KE testified that the Second 10 Day Notice was posted on the tenant's door on March 2, 2023. The tenant testified that he received the Second 10 Day Notice on March 2, 2023. The tenant did not file to dispute the Second 10 Day Notice.

Agent KE testified that the tenant did not pay any rent whatsoever for the months of October 2022, January 2023, February 2023, March 2023, April 2023, or May 2023. The tenant testified that they agreed with the above testimony. Later in the hearing, the tenant testified that January 2023 's rent was paid, then testified that it wasn't paid and changed testimony again to say that it was paid. The tenant did not enter into evidence proof of a January 2023 rent payment.

The landlord entered into evidence a rent Ledger which states that rent for October 2022, January 2023, February 2023, and March 2023 were not paid. The ledger does not contain rent data for April or May 2023.

The landlord entered into evidence a January 2023 bank statement which shows that the tenant's account was frozen and the rent payment did not go through.

Agent KE testified that the tenant was late paying rent in August, November, and December of 2022. The tenant testified that she was only late paying rent in November and December of 2022 and not in August of 2022. Both parties agree that the late November 2022 and December 2022 rent payments resulted in 10 day notices to end tenancy for unpaid rent being served on the tenant. Both parties agree that the tenant paid November 2022 and December 2022's rent within five days of receiving the notices to end tenancy.

The landlord entered into evidence a Ledger which states that rent for August, November and December of 2022 were paid late.

The tenant testified that her late rent payments and lack of rent payments occurred due to bank errors. No documentary evidence to support this testimony was provided by the tenant. The tenant testified that she should have written new cheques.

Analysis

Based on the testimony of both parties I find that the Notices and the Second 10 Day Notice were served on the tenant in accordance with section 88 of the Act. I find that the Notices were received by the tenant by January 8th, 2023, as that is the date the tenant file to dispute them. I find that the tenant received the Second 10 Day Notice on March 2, 2023 as that is the day the tenant confirmed receipt. Upon review of the Notices and the Second 10 Day Notice, I find that they meet the form and content requirements of section 52 of the Act.

Based on agent KE's testimony, the tenancy agreement, and the Ledger, I find that this tenancy started on April 1, 2022 at a rental rate of \$1,100.00 per month due on the first day of every month. Based on the testimony of both parties I find that the tenant was served with a notice of rent increase which raised the rent to \$1,122.00 effective April 1, 2023.

Both parties agree that the tenant did not pay the landlord rent for October 2022, February 2023, March 2023, April 2023 and May 2023.

I found the tenants testimony regarding the payment of January 2023 's rent to be entirely unreliable as it changed multiple times during the hearing. Based on the landlord's ledger and bank statements entered into evidence I find that the tenant did not pay January 2023's rent.

I find that the tenant has not proved that the late payment of rent resulted from any bank error as no supporting evidence was provided. In addition, I find that after being served with the First Ten Day Notice the tenant was clearly made aware that the landlord did not receive rent and failed to take reasonable steps, such as writing new cheques, to ensure the landlord received rent payment for January - April, 2023 or for previous arrears incurred in October of 2022.

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.

In this case the tenant did not pay the overdue rent within five days of receiving the First Notice. I therefore dismiss the tenant's application to cancel the First 10 Day Notice.

Section 55(1) of the *Act* states that 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.

I find that since the First 10 Day Notice complies with section 52 of the *Act* and the tenant's application to cancel the First 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00 on the first day of each month from October 2022 until March 2023, and \$1,122.00 on the first day of every month from April 1, 2023 to May 1, 2023.

Based on the testimony of agent KE and the ledger entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord the following in unpaid rent:

- October 2022: \$1,100.00,
- January 2023: \$1,100.00,
- February 2023: \$1,100.00,
- March 2023: \$1,100.00, and
- April 2023: \$1,122.00.

I order that this tenancy ended on the date of this hearing, May 4, 2023. I find that the landlord is entitled to pro-rated rent from May 1-4, 2023 in accordance with the following calculation:

$$\$1,122.00 \text{ (rent)} / 31 \text{ (days in May)} = \$36.19 \text{ (daily rate)} = \$144.76$$

If the tenant overholds (resides in the subject rental property past May 4, 2023) the landlord is at liberty to file another claim for damages for overholding.

As I have already determined that this tenancy has ended pursuant to the First Ten Day Notice, I decline to consider the Second 10 Day Notice or the One Month Notice.

As the landlord was successful in the monetary portion of their application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

As the tenant was unsuccessful in their application for dispute resolution, I find that they are not entitled to recover the \$100 filing fee from the landlord.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October 2022	\$1,100.00
January 2023	\$1,100.00
February 2023	\$1,100.00
March 2023	\$1,100.00
April 2023	\$1,122.00
May 2023	\$144.76
Filing Fee	\$100.00
TOTAL	\$5,766.76

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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 04, 2023

Residential Tenancy Branch