



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

On January 29, the tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued on November 29, 2022, and for an order that the landlord comply with the Act by naming the correct parties and providing a copy of the tenancy agreement.

On April 14, 2023, the tenant applied to cancel a 10 Day Notice issued on April 11, 2023. The landlord filed an application on April 25, 2023, for an order of possession and unpaid rent based on the same April 10 Day Notice.

All three applications were set to be heard together by telephone conference call at 9:30 am on May 23, 2023.

Preliminary Matters

The landlord’s application names two tenants, SW and JS. SW says that JS is not a tenant. SW submitted a copy of an email from the landlord dated July 3, 2022, attaching a tenancy agreement that names SW as the only tenant.

The landlord’s agent did not refute this second tenancy agreement. In addition, although the landlord served a separate 10 Day notice to each of SW and JS, the landlord only served one Notice of Dispute Resolution Proceeding package to SW. The landlord did not meet the requirement of Policy Guideline #12 to serve a separate Notice of Dispute Resolution Proceeding package to each party named on an application.

Therefore, I amend the landlord’s application to remove JS as a respondent pursuant to section 64(3)(c).

Issue(s) to be Decided

1. Will the November or April 10 Day notice end the tenancy?
2. Is the tenant entitled to an order that the landlord comply with the Act?
3. Is the landlord entitled to unpaid rent?
4. Is the landlord entitled to recover their filing fees?

Facts and Analysis

1. Will the November or April 10 Day notice end the tenancy?

The parties agree that the tenancy started on September 22, 2021, with a monthly rent of \$2,600.00 due on the 22nd of each month. The landlord still holds a deposit of \$1,300.00, which was paid by JS on August 28, 2021.

The tenant confirmed that they are still living in the rental unit. The landlord confirmed the last payment they received from the tenant was \$500.00 partial rent for September 2022.

The landlord issued a 10 Day Notice on November 29, 2022, which was cancelled by the Residential Tenancy Branch in a decision dated March 21, 2023.

The landlord then issued and served a 10 Day Notice by registered mail to the tenant on April 11, 2023, for \$17,700.00 rent owing, and the tenant says they received it.

The tenant admits they have not paid the rent owing under the tenancy agreement. However, they say that the landlord agreed to them withholding rent. The tenant also says they are in the process of obtaining rent subsidy due to disability after experiencing two car accidents.

The tenant provided copies of their text message and email correspondence with the landlord. In the text messages the tenant says they obtained a monetary order against a previous landlord in the amount of \$18,000.00. The monetary order was granted on December 6, 2022. The tenant's text message of December 9, 2022, says once they collect it, they can pay their current landlord.

The landlord's agent says the landlord did not agree to the tenant withholding rent. There is no evidence that the landlord replied to the tenant's text messages. In addition, on December 6, 2022, the landlord's email asks the tenant to arrange another place as

the landlord will not be able to take it [the tenancy] further. The tenant has not proven the landlord agreed to the tenant withholding rent.

Therefore, I dismiss the tenant's applications to cancel the November 10 Day Notice and the April 10 Day Notice, without leave to reapply.

The 10 Day Notice issued on April 11, 2023, complies with section 52 of the Act. I find the landlord is entitled to an order of possession pursuant to section 55 of the Act.

2. Is the tenant entitled to an order that the landlord comply with the Act?

As this will end the tenancy, I dismiss the tenant's application for the landlord to comply with the Act, without leave to reapply.

3. Is the landlord entitled to unpaid rent?

The landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act from September 2022 to May 2023 as follows:

Month	Rent owing
September 2022	\$2,100.00
October 2022	\$2,600.00
November 2022	\$2,600.00
December 2022	\$2,600.00
January 2023	\$2,600.00
February 2023	\$2,600.00
March 2023	\$2,600.00
April 2023	\$2,600.00
May 2023	\$2,600.00
TOTAL	\$22,900.00

I grant the landlord a monetary order under section 67 of the Act for \$22,900.00.

4. Is the landlord entitled to recover their filing fees?

As the landlord was successful, I find they are entitled to recover their \$100.00 filing fee.

Conclusion

I dismiss both of the tenant's applications without leave to reapply.

I grant an order of possession to the landlord effective two (2) days after service of this order on the tenant. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$23,000.00 for rent owing from September 2022 to May 2023 and the filing fee. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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: May 24, 2023

Residential Tenancy Branch