



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT / OPR-DR, MNR-DR, FFL

Introduction

The hearing was convened following applications for dispute resolution (“Applications”) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”); and
- compensation for monetary loss under section 67 of the Act;

The Landlord requests the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- a Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

Both parties attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the “Materials”) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
- 4) Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on November 1, 2022.
- Rent is \$3,500.00 per month due on the first day of the month.
- A security deposit of \$1,750.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence by the Landlord.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. They issued the Notice on March 15, 2023 after rent due on March 1, 2023 went unpaid. No payments have been made since, so Tenant has now not paid rent for the months of March 2023, April 2023 and May 2023.

They seek an Order of Possession and a Monetary Order for the unpaid rent which now amounts to \$10,500.00.

The Tenant testified as follows. They were ready to pay rent but then they received the Notice. They had asked for \$800.00 from the Landlord as reimbursement for repairs the Tenant carried out in the kitchen of the rental unit. The Tenant explained that the kitchen was in a bad condition and there was a smell coming from the cupboards as something was rotten.

The Tenant did not dispute the amount of outstanding rent. No evidence was provided by the Tenant in respect of the repairs they carried out.

In response to the Tenant's testimony, the Landlord stated they were never notified by the Tenant of any deficiencies with the kitchen.

A copy of the Notice was entered into evidence by both parties. The Notice is dated March 15, 2023 and provides an effective date of March 25, 2023. The amount of outstanding rent provided is \$3,500.00, due on March 1, 2023. Additionally, unpaid utilities in the amount of \$142.03 are listed, following a written demand on March 10, 2023.

The Tenant acknowledged receipt of the Notice and confirmed it was attached to the door of the rental unit, though they could not remember the precise date. The Landlord confirmed the date of the written demand for utilities of March 10, 2023 was correct.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;

- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenant testified that they withheld rent after incurring costs when carrying out repairs to the rental unit. However, based on their testimony, I do not find the repairs fall within the categories of emergency repairs set out in section 33(c) of the Act.

The Tenant also failed to prove to me, on the balance of probabilities, that they notified the Landlord regarding the repairs or provide an explanation as to why rent in the amount of \$3,500.00 was withheld when costs claimed in respect of repairs were \$800.00. Therefore, I am satisfied that the Tenant had no valid reason to withhold rent and that rent in the amount of \$3,500.00 was due on March 1, 2023.

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 to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read March 28, 2023 instead of March 25, 2023.

As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply and the Landlord's Application is granted.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 28, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$10,500.00 in unpaid rent to the Landlord.

The Landlord also requested \$142.03 in respect of unpaid utilities. Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end tenancy.

The Landlord testified that the written demand was issued to the Tenant on March 10, 2023. As the Notice was issued on March 15, 2023, the required 30 day period had not elapsed, as required under section 46(6) of the Act. Therefore, I find the Landlord is not entitled to recover the claimed amount for unpaid utilities in their Application and the amount of \$142.03 will not be included in the payment order.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Landlord's Application is granted. The Tenant's Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a **Monetary Order**. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve

the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$10,500.00
Filing fee	\$100.00
Less: security deposit	(\$1,750.00)
Total	\$8,850.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 09, 2023

Residential Tenancy Branch