



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- compensation for monetary loss or other money owed under section 67 of the Act;
- for the Landlord to comply with the Act, Residential Tenancy Regulation (the “Regulation”) or the tenancy agreement under section 62 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

Both the Landlord and the Tenant 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 Matter: Tenant Vacated the Rental Unit

The Tenant testified they had given notice to end the tenancy to the Landlord and vacated the rental unit on April 15, 2023. The Landlord agreed that the Tenant had vacated the rental unit, though believed this occurred on April 16 or 17, 2023.

The Tenant was asked if they still wished to dispute the Notice, given that they had vacated the rental unit and canceling the Notice would result in the reinstatement of the tenancy. The Tenant stated they still wished to dispute the Notice.

Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?
- 4) Is the Tenant entitled to compensation?
- 5) Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation, or tenancy agreement?
- 6) Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

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 May 1, 2022.
- Rent was \$2,100.00 per month due on the first day of the month.
- A security deposit of \$1,050.00 was paid by the Tenant which the Landlord still holds.
- There was no written tenancy agreement.
- The Tenant no longer occupies the rental unit.

The Landlord testified as follows. The parties spoke via telephone on December 10, 2022. During the conversation the Landlord advised the Tenant that in the coming spring they were planning on renovating the rental unit and that the Tenant would have to leave. The purpose of the telephone call was to provide the Tenant advance warning of this. The Tenant stated they were planning on leaving anyway at some point as the rental unit was too big for them.

The Landlord later found out that the informal notice they had given the Tenant regarding the renovations was not binding and that to comply with the Act they would

have to apply for permits and approval from the Residential Tenancy Branch before serving the Tenant a Four Months' Notice to End Tenancy for Demolition or Conversion of a Rental Unit (form RTB-29). The Tenant had also sent the Landlord a text message in March 2023 to provide this information. However, no RTB-29 form was served to the Tenant by the Landlord.

On March 31, 2023 the Tenant sent the Landlord an email providing their notice to end tenancy effective April 15, 2023. The Landlord received the notice, but informed the Tenant that rent would still be due on April 1, 2023 as an insufficient notice period had been provided.

The Tenant did not pay rent on April 1, 2023 and the Notice was served April 2, 2023 by attaching to the door of the rental unit. A copy of the Notice was entered into evidence by both parties.

The Notice is signed April 2, 2023 and provides an effective date of April 11, 2023. The amount of outstanding rent listed on the Notice is \$2,100.00, as of April 1, 2023 and outstanding utilities of \$287.79 are listed, following a written demand on March 30, 2023. The Tenant did not make any payments to the Landlord after the Notice was issued.

The Tenant testified as follows. They were aware that the Landlord had to use the approved form to end the tenancy for the purposes of renovating the rental unit. They acknowledged that no such approved form was received from the Landlord, other than the Notice, which is a 10 Day Notice to End Tenancy for Unpaid Rent. They confirmed that rent was not paid after receiving the Notice.

They seek \$1,050.00 in compensation which is the equivalent of half a month's rent. They believe they are entitled to one month's rent compensation, as this amount would have been due to them had a Four Month Notice to End Tenancy been issued by the Landlord. They have already withheld half a month's rent so seek the remaining half.

The Tenant wishes for the Landlord to comply with the Act, Regulation or tenancy agreement by them issuing a valid Four Month Notice to End Tenancy.

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 Regulation;
- if the landlord gives authorization to not pay rent;
- when the tenant is entitled to one month's rent compensation having received a Notice to End Tenancy under section 49 of the Act; or
- as ordered by the Director.

The Tenant stated they were entitled to withhold rent due on April 1, 2023 as there was compensation due to them in relation to a Four Month Notice to End Tenancy. Section 51(1) of the Act states a tenant is entitled to one month's rent compensation if a Notice to End Tenancy under section 49 (landlord's use of property) is received. However, in this case, both parties agreed that no such notice had been issued. Section 52(e) of the Act states that when a notice to end tenancy is issued by a landlord, it must be on the approved form. As no Notice to End Tenancy under section 49 of the Act in the approved form was issued to the Tenant, I find that the Tenant is not entitled to one month's rent compensation. As a result, I dismiss without leave to reapply their request for compensation.

Additionally, based on the above findings, I am satisfied that the Tenant had no reason under the Act to withhold rent and was required to pay \$2,100.00 on April 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 April 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 note that the Notice does not list the suite number of the rental unit. Section 68(1) of the Act states that a notice to end tenancy may be amended if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. In this case, I find it appropriate to amend the Notice to include the suite number and that this would not be overly prejudicial to the Tenant. With this amendment, I find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

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 April 15, 2023 instead of April 11, 2023. I find that the Tenancy ended on April 15, 2023 in accordance with the Notice.

Based on the above findings, the Landlord is entitled to an Order of Possession under section 55(1) of the Act, though as both parties agreed the Tenant had vacated the rental unit, one shall not be issued.

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 \$2,100.00 in unpaid rent to the Landlord.

In addition to unpaid rent, the Landlord seeks compensation for unpaid utilities from the Tenant. Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utilities to the landlord and if the utilities go unpaid for more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utilities as unpaid rent and may give the tenant a Notice to End Tenancy.

Based on the testimony from both parties, I find that the written demand for payment of the utilities referenced on the Notice was sent from the Landlord to the Tenant on March 30, 2023. I also find that the Notice was issued on April 2, 2023 which is within 30 days after the written demand for utilities was made. As the Landlord issued the Notice within 30 days of the written demand for utilities, I find they are not entitled to recover the unpaid utilities under the Notice.

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

As the tenancy is ended and the Tenant has vacated the rental unit, I dismiss without leave to reapply their request for the Landlord to comply with the Act, Regulation or tenancy agreement. The Tenant is requesting the Landlord issue a Notice to End Tenancy which has ended already so this matter is now moot.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is authorized to retain the security deposit.

The Landlord is issued a **Monetary Order**. 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	\$2,100.00
Less: security deposit	(\$1,050.00)
Total	\$1,050.00

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 16, 2023

Residential Tenancy Branch