



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL-MT, RR, RP, AAT, OLC

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);
- an order canceling a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49(8)(a) of the Act;
- to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- an order for repairs to be made to the rental unit under section 32 of the Act;
- for the landlord to allow access to the rental unit under section 70 of the Act; and
- for the Landlord to comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 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 Issue: Presence of the Landlord's Representative

The Tenant objected to the presence of Landlord's Representative, FY, at the hearing as they are a disbarred lawyer. I noted on the Law Society of British Columbia's website that FY was listed as an unauthorized practitioner and was prohibited from, amongst other things, representing himself as a lawyer and from appearing as counsel or advocate under an order of the British Columbia Supreme Court.

FY stated that they were a personal friend of YY, the Landlord, and were present at the hearing in the capacity as a lay person and they were not providing advice or representation in any professional capacity.

Given this, I allowed FY to remain in the hearing. Only YY provided affirmed testimony for the Landlord during the hearing.

Preliminary Issue: Order of Possession

The Tenant's supporting evidence and a search of previous decisions relating to the parties showed that an Order of Possession relating to the tenancy had been issued by the Residential Tenancy Branch on November 8, 2022. The file number for this application is shown on the first page of this Decision.

In order to determine if the matter before me had already been decided, I asked the parties regarding the status of the Order of Possession. The parties agreed that the Order of Possession had been quashed by the Supreme Court of British Columbia following judicial review and that the matter had been sent back to the Residential Tenancy Branch to be heard again. The parties had then come to a mutual settlement of the issue so it was not re-heard.

As the Order of Possession remains quashed, I am satisfied that the issue before me has not been decided already and I am able to hear it.

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 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?

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, 2021.
- Rent is \$1,150.00 per month due on the first day of the month.
- A security deposit of \$375.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. The Tenant did not pay rent due on March 1, 2023 and a 10 Day Notice to End Tenancy for Unpaid Rent was issued. The Tenant paid the outstanding rent within 5 days which canceled the Notice to End Tenancy.

The Tenant was again late paying rent on April 1, 2023 so the Landlord issued the Notice on April 2, 2023. Since the Notice was issued, no payments have been received from the Tenant and rent due May 1, 2023 also went unpaid. The total amount of outstanding rent is now \$2,300.00, as of May 1, 2023.

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 17, 2023.

The Tenant testified as follows. When they received the Notice, they thought the correct process was to dispute it first and then obtain an order confirming if rent needed to be paid or not. They found out on May 12, 2023 that this was not the case.

The Tenant spoke about circumstances and pressures in their personal life which had made things difficult for them recently. They stated they didn't have money for rent at the time the Notice was issued though were willing to pay now.

The previous tenant in the rental unit had left garbage that the Landlord did not properly cleared which left an unsanitary situation. They also had to do work in the yard themselves. Additionally, there had been issues with the heating system throughout the tenancy, though the Tenant had not paid for any repairs themselves. The downstairs unit and other upstairs suites in the rental property were also unoccupied for extended periods of time. The Tenant stated they feel like the Landlord owes her rent because of this.

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*;
- when a tenant has received a Two Month Notice to End Tenancy for Landlord's Use of Property and they withhold the last month's rent per section 51.4(2) of the Act;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Though a Two Month Notice to End Tenancy for Landlord's Use had been issued to the Tenant, the effective date of that Notice to End Tenancy is June 30, 2023. There was no indication the Tenant had exercised their right to end the tenancy early and given the Landlord notice to end the tenancy and therefore was entitled to withhold the last month's rent. The last month's rent due under the Two Month Notice would be due June 1, 2023, which the Tenant could have withheld then. Furthermore, the Tenant had not paid rent for two months which further indicates to me that the Tenant was not exercising their right to withhold rent under section 51.4(2) of the Act. Therefore, I am satisfied that rent in the amount of \$1,150.00 was due on April 1, 2023.

I make no findings of fact about the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 24, 2023.

The Tenant provided testimony regarding recent events in their personal life and described health issues which gave some explanation as to why rent had not been paid. Whilst I have sympathy for the Tenant and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

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 also 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.

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 April 17, 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 \$2,300.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

Conclusion

The Application is dismissed without leave to re-apply.

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 Tenant. 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. 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 | \$2,300.00 |
| Less: security deposit | (\$375.00) |
| Total | \$1,925.00 |

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 30, 2023

Residential Tenancy Branch