



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 678490 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, MNDCT, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord was represented by building manager, AE. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue 01

The landlord acknowledges being served with the tenant's Notice of Dispute Resolution Proceedings package, but testified it was only received on May 23rd when it was discovered in the basement office by a colleague while the building manager was overseas on vacation. The tenant testified she sent the Notice of Dispute Resolution Proceedings package to the landlord via registered mail on February 13, 2023 and provided the tracking number for the mailing which is recorded on the cover page of this decision. The landlord testified she never got a notification from Canada Post that she

had any registered mail waiting for her. I find that the landlord was effectively served with the Notice of Dispute Resolution Proceedings package on February 18, 2023, the fifth day after it was sent via registered mail in accordance with sections 88 and 90 of the Act.

The landlord prepared an evidence package when she returned from overseas. She sent it to the tenant via registered mail on May 30, 2023 and uploaded a copy to the Residential Tenancy Branch website the same day. The tenant denies receiving the landlord's evidence. As the landlord did not serve her evidence to the tenant and the Residential Tenancy Branch within 7 days before the hearing as required under rule 3.15, and because the tenant did not receive it, the landlord's evidence was excluded from consideration in this decision.

Preliminary Issue 02

The parties agree that the tenant paid the outstanding arrears as shown on the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on February 02, 2023, one day after it was served upon her. Pursuant to section 46(2), the notice has no effect as the tenant paid the overdue rent within 5 days after receiving it. Consequently, the tenant's application seeking to cancel the notice is dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act?
Is the tenant entitled to compensation from the landlord?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant testified that on February 01, 2023, she was tired, fell asleep and forgot to pay her rent on the first. She had been living in this building for the past 10 years and has never paid rent late or had a cheque returned to her with insufficient funds.

When she recognized that she forgot to pay rent, she tried to contact the landlord. By the time she returned home from work on the 2nd, the landlord had already served her with the notice to end tenancy for unpaid rent. The tenant testified that the landlord refused to accept her personal cheque and “forced” her to pay by money order. This cost her an additional \$9.00 fee and she had to take time off work, approximately 3 hours at \$43.75 per hour to purchase the money order.

In evidence, the tenant provided a photo of a note posted to the landlord’s office door which reads, “...*Please be reminded that rent is due every 1st of the month regardless of what day it is. Pay your rent via cheque or money order/bank draft (which you can get ahead of time to avoid late payment of \$25.00)*”.

The tenant also seeks to recover the \$25.00 fee charged by the landlord for the late payment of rent. Lastly, the tenant seeks to recover approximately \$150.00 in copying and printing fees.

During the hearing, I asked the tenant what section of the Act, regulations or tenancy agreement that the landlord is not complying with. The tenant responded saying that the landlord refuses to accept her rent payments by cheque. In the application, the tenant seeks that the landlord provided receipts for payments of rent, but acknowledges that she pays via cheque and not cash. She also seeks an order to “not change pay method”. During the hearing, the tenant agreed to provide the landlord with post-dated cheques until the end of December 2023 in order to avoid another incident of late rent.

The landlord gave the following testimony. This is not the first time the tenant has been late in paying rent. The landlord will accept payment for rent via personal cheque up until midnight on the first of each month; if it’s late, the policy is for the landlord to only accept a money order or bank draft. The landlord testified that the reason is because she goes to the bank at 2:00 p.m. on the second of each month to deposit the rent.

The landlord testified that on February 2nd, the tenant tried to force her to accept a personal cheque, although it was now late. According to her instructions, the landlord was only to accept money orders or bank drafts because the rent was late. The interaction was videotaped by the tenant and took place in front of the landlord’s children which was upsetting to them.

Analysis

The tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement. The tenant wants the landlord to provide receipts for rent payments made by cheque. There is no requirement under the Act that a landlord is required to do so. Only when rent payments are made by cash is a landlord required to provide a receipt pursuant to section 26(2) of the Act. Moreover, the tenant acknowledged that when she pays by personal cheque, the cheques are returned to her from the bank. I determined that the cancelled cheques are sufficient proof of payment of rent and consequently, this portion of the tenant's application is dismissed.

The tenant seeks an order that the landlord accept her rent via personal cheque. There is no section of the Act that requires a tenant to pay rent in any particular form. Nor has the landlord provided any evidence to indicate on the tenancy agreement that the parties agreed to a term that the tenant pay late rent via money order or bank draft. The requirement that late rent payments be in the form of a bank draft or money order appears to be arbitrary on the landlord's part as the landlord provided insufficient reasons to justify such an onerous requirement. I have no evidence before me that the tenant has ever failed to pay her rent by not having sufficient funds in her account.

I order that the landlord comply with the Act and accept any means of payment of rent proffered by this tenant. As the tenant has agreed to pay her rent by post-dated personal cheques, it is unlikely that late payments will occur again however I stand by this order.

Section 7(1)(d) of the Residential Tenancy Regulations allows a landlord to charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. I find that the fee is allowable under the regulations and the landlord is entitled to retain the late payment fee it collected.

The tenant was "forced" to purchase a money order to comply with the landlord's requirement that late payment of rent be in that form. I have already found that this requirement is not supported under the terms of the tenancy agreement or the Residential Tenancy Act. As such, I find that the tenant has suffered a loss from the landlord's actions and that she is entitled to compensation as sought, for **\$9.95**.

The tenant seeks an additional 3 hours to purchase the money order, however provided very little evidence to satisfy me that it took that long to perform such a simple task. I accept that her hourly wage is \$43.75 per hour and I award her one hour for the purchase of the money order. I award the tenant an additional **\$43.75**.

Section 72(1) of the Act provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the Act does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence, copying evidence or serving hearing documents. The tenant's application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

Lastly, the tenant was partially successful in her application and I exercise my discretion under section 72 to award her half the filing fee, or **\$50.00**.

Conclusion

I order that the landlord comply with the Act and accept any means of payment of rent proffered by this tenant.

I grant the tenant a monetary order in the amount of **\$103.70**. In accordance with the offsetting provisions of section 72, the tenant may reduce a single payment of rent owing to the landlord by \$103.70.

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: June 05, 2023

Residential Tenancy Branch