



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Tesso Management Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants: CNL-MT, FFT, CNR, FFT
Landlord/Tenant: OPR, MNRL-S, FFL

Introduction

The Tenant P.A, the Tenant A.A., and the Tenant D. E.O-W. filed an Application for Dispute Resolution on March 8, 2023, seeking a cancellation of the Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two-Month Notice"). They seek additional time to dispute the Two-Month Notice, and reimbursement of the Application filing fee.

The Tenant S.E./Landlord TM Corp. (the "Tenant/Landlord") filed an Application for Dispute Resolution on May 18, 2023 for an Order of Possession in line with a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") that they issued to the Tenant D.E.O-W. They seek recovery of rent amounts owing from the Tenant D.E.O-W., and reimbursement of the Application filing fee. With the Application set out above already in place, the Residential Tenancy Branch joined this Application from the Tenant/Landlord to that prior Application.

The Tenant/Landlord filed a second Application for Dispute Resolution on May 18, 2023 for an Order of Possession in line with a 10-Day Notice that they issued to the Tenant P.A. They seek recovery of rent amounts owing from the Tenant P.A., and reimbursement of the Application filing fee. With the first Application set out above already in place, the Residential Tenancy Branch joined this second Application from the Tenant/Landlord to that prior Application.

The Tenant P.A. and the Tenant D.E.O-W. filed an Application on May 10, 2023 to contest each 10-Day Notice that they received from the Landlord. They also seek

reimbursement of the Application filing fee. The Residential Tenancy Branch joined this Application to the initial March 8, 2023 Application that these Tenants filed.

The matter proceeded by way of a participatory hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 27, 2023.

The Tenant P.A., the Tenant D.E.O-W., and the Landlord/Tenant attended the conference call hearing. I explained the process and each participant had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, each participant confirmed they received the Notice of Dispute Resolution Proceeding from the other, as well as the other party’s document evidence. On the basis of each party confirming that they received the other’s evidence, the hearing proceeded at the scheduled date and time.

Preliminary Issue – Parties to this Dispute Resolution Proceeding

As they provided in their evidence, the Tenant/Landlord has a tenancy agreement in place with the Landlord/Owner R.K. (the “Landlord/Owner”). That document shows the tenancy starting December 1, 2019 on a month-to-month basis. This is for the whole of the rental unit property, for \$3,000 per month.

The rental unit property consists of individual rooms that the Tenant/Landlord rents out. The Tenant P.A. and the Tenant D.E.O-W. rent out separate rooms. They are tenants who share a common space in the rental unit property. As they confirmed in the hearing, each has a separate agreement, for separate amounts of rent, with their Landlord, who is the Tenant/Landlord. Each Tenant paid a separate amount of a security deposit, as specified by the Tenant/Landlord on each Application they filed at the Residential Tenancy Branch, linked to the two Tenants’ Applications.

The Tenant P.A. and the Tenant D.E.O-W. are not co-tenants. They are not roommates because this was not a situation where one of these two tenants allowed the other to live with them. Each of these tenants has a separate agreement with the Tenant/Landlord.

I distinguish this arrangement from that of a sub-tenancy: the Landlord/Tenant did not transfer their rights under their own separate tenancy agreement with the Landlord/Owner to either the Tenant P.A. or the Tenant D.E.O-W., neither jointly nor

separately. Also, the Landlord/Tenant did not grant exclusive occupancy to either the Tenant P.A. or the Tenant D.E.O-W.

I find as fact that there is no contractual relationship between the Tenant P.A. and the Landlord/Owner.

I find as fact that there is no contractual relationship between the Tenant D.E.O-W. and the Landlord/Owner.

Preliminary Issue – the Landlord/Owner's Two-Month Notice

The Landlord/Owner issued the Two-Month Notice to the Tenant/Landlord on January 25, 2023, setting the end-of-tenancy date for March 31, 2023.

The Tenant P.A. and the Tenant D.E.O-W. each received a copy of this document on March 1, either from the Tenant/Landlord, or another resident at the rental unit property. On March 8, 2023, the Tenant P.A., and the Tenant D.E.O-W. filed the first Application in this matter, challenging the validity of this Two-Month Notice as against the Tenant/Landlord, and naming the Landlord/Owner as a Respondent.

Because it was filed after the 15-day time limit identified on the document in which a tenant may dispute the Two-Month Notice, the Tenants P.A. and D.E.O-W. asked for more time to dispute. They also applied for reimbursement of the Application filing fee.

As set out above, there is no contractual relationship between the Landlord/Owner and either of the Tenants P.A. or D.E.O-W. I find each of the Tenant P.A. and the Tenant D.E.O-W. rent separately from the Tenant/Landlord. Neither the Tenant P.A. nor the Tenant D.E.O-W., separately or together, can dispute the Two-Month Notice because neither of them is a party to that agreement. These Tenants did not present any evidence of a contractual relationship or tenancy agreement they have with the Landlord/Owner.

I dismiss this Application to dispute the Two-Month Notice because the Landlord/Owner did not serve this Two-Month Notice to the Tenant P.A. or the Tenant D.E.O-W. They have no rights under the Act to dispute this matter in an agreement they are not a party to.

I therefore dismiss this Application in its entirety, without leave to reapply. There is no refund of the Application filing fee.

Issue(s) to be Decided

A. The Tenant P.A.:

- i. Is the Tenant P.A. entitled to a cancellation of the 10-Day Notice?
- ii. If the Tenant P.A. is unsuccessful, is the Tenant/Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?
- iii. Is the Tenant/Landlord entitled to compensation for rent amounts, pursuant to s. 55(1.1) of the *Act*?
- iv. Is the Tenant/Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?
- v. Is the Tenant P.A. entitled to reimbursement of the Application filing fee for their Application?

B. The Tenant D.E.O-W.:

- i. Is the Tenant D.E.O-W. entitled to a cancellation of the 10-Day Notice?
- ii. If the Tenant D.E.O-W. is unsuccessful, is the Tenant/Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?
- iii. Is the Tenant/Landlord entitled to compensation for rent amounts, pursuant to s. 55(1.1) of the *Act*?
- iv. Is the Tenant/Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?
- v. Is the Tenant D.E.O-W. entitled to reimbursement of the Application filing fee for their Application?

Background and Evidence

A. The Tenant P.A.:

In the hearing, the Tenant P.A., and the Landlord both confirmed the basic information about the tenancy agreement in place. The tenancy started on February 1, 2021. The rent amount is \$800 per month and the Tenant paid a \$300 security deposit. The Tenant occupies one room at the rental unit property, sharing common areas with other tenants.

Upon learning of, or viewing, the Two-Month Notice (detailed above) in early March 2023, the Tenant P.A. stated they were confused on who their Landlord was. Their suspicion, as raised to the Landlord/Tenant, was that the Landlord/Tenant was speaking of ending the tenancy in order to turn the rental unit property into an Airbnb. The Landlord showed them the separate Two-Month Notice in order to clarify the issue.

As stated in the hearing, the Tenant P.A. then withheld rent from the Landlord. The Tenant P.A. stated they were not sure of who their Landlord was. Additionally, the Two-Month Notice entails one free month of rent as compensation to a tenant who receives it. The Tenant P.A. also cited the poor/noisy condition of the rental unit property in rationalizing why they were not paying rent, as well as paying extra utilities amounts for a person staying at the rental unit property who is a rent-free guest of the Landlord/Tenant. The Tenant P.A. also described the work they completed in maintaining the rental unit property for the Landlord/Tenant, without compensation, being the only resident at the rental unit property who completes that work.

The Landlord/Tenant in the hearing stated they previously had no reason or notification from the Tenant P.A. on why they were not paying rent. What the Tenant P.A. presented for this hearing was the first they learned of the issues. They described no proof, as from the Tenant P.A., that others presented themselves to the Tenant P.A. as their Landlord, other than the Landlord/Tenant themselves. As stated in the hearing: "It's obvious, as in the case of other residents staying there [i.e., at the rental unit property], who they should pay rent to."

The Landlord/Tenant in their evidence presented the 10-Day Notice they served to the Tenant P.A. via registered mail on May 4, 2023. This set the end-of-tenancy date at May 14, 2023, and indicated the amount of rent owing as of May 1 was \$2,400.

The Landlord/Tenant listed each of the months of March, April, May, and June 2023 as unpaid rent from the Tenant P.A. At \$800 per month, the Landlord/Tenant calculated \$3,200 as owing from the Tenant P.A. as of the date of this hearing.

B. The Tenant D.E.O-W.:

In the hearing, the Landlord/Tenant presented the basic information about their agreement with the Tenant D.E.O-W., and the Tenant D.E.O-W. did not object to that information. The tenancy started on February 1, 2022 with the rent amount of \$700. The Landlord/Tenant's Application indicates the Tenant D.E.O-W. paid a \$700 security deposit.

As with the Tenant P.A., the Tenant D.E.O-W. viewed the Two-Month Notice in March 2023. From that time on they did not pay rent to the Landlord/Tenant. As they described in the hearing, "it all starts from the Two-Month Notice, [that] caused confusion".

The Landlord/Tenant's evidence for this separate Application for an Order of Possession includes a copy of the 10-Day Notice they issued to the Tenant D.E.O-W. on May 4, 2023. This set the end-of-tenancy date at May 14, 2023, and the Landlord/Tenant listed the rent amount owing at \$2,100.

The Landlord/Tenant in the hearing clarified that, in the case of this tenancy with the Tenant D.E.O-W., they did not pay rent for each of March, April, and May 2023. As of the date of the hearing, the Tenant D.E.O-W. did not pay rent for the month of June 2023. The total, as of the date of the hearing, is \$2,800.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under a tenancy agreement, whether or not a landlord complies with the *Act*, the regulations, or the tenancy agreement, unless a tenant has some right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “it rent is unpaid on any day after it is due”. A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

Under s. 55 of the *Act*, when a tenant’s application to cancel a notice to end tenancy is dismissed, and the document itself complies with the requirements of s. 52 regarding form and content, a landlord is entitled to an order of possession.

The *Act* s. 55(1.1) specifies that a landlord is entitled to repayment of rent amounts owing where a tenant’s application is dismissed, and the document complies with s. 52.

The *Act* s. 72(2) gives an arbitrator the authority to make any deduction from a security deposit held by a landlord.

A. The Tenant P.A.:

I find the Landlord/Tenant and the Tenant P.A. agreed on the basic terms of the tenancy agreement they had in place. That is a rent amount of \$800 payable on the first of each month. I find as fact that the Tenant P.A. paid a security deposit of \$300 at the start of the tenancy.

In this dispute, the Landlord/Tenant issued the 10-Day Notice on May 4, 2023. The Tenant did not complete rent payments within 5 days of being served the 10-Day Notice. The Tenant confirmed this in the hearing when they stated they made no rent payments to the Landlord. The Landlord/Tenant served the document by registered mail, so accounting for a 5-day deemed service period to May 9, the Tenant had until May 14 to pay rent in full; however, they did file for a dispute within the required 5-day period.

I conclude the Tenant P.A. did not pay the full rent amount as required on the 1st day of the month as per the tenancy agreement. I dismiss the Tenant P.A.’s Application for this reason. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent. I find the Tenant breached s. 26 of the *Act* and further breached s. 46(4) by not paying the full amount of rent as required. I do not accept the Tenant P.A.’s submission that their Landlord changed, and they were not sure who they should pay rent to.

I find the 10-Day Notice the Landlord/Tenant served to the Tenant P.A. via registered mail on May 4, 2023 complies with the requirements of s. 52 regarding form and content. As per s. 55 of the *Act*, I grant the Landlord/Tenant an order of possession.

The *Act* s. 55(1.1) also applies in this situation. I authorize the Landlord/Tenant to amend their Application to include the month of June 2023. This is the total amount of \$3,200.

The Landlord/Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee to them. This total amount is \$3,300.

As per s. 72(2) of the *Act*, I set off the Tenant P.A.'s full security deposit amount of \$300 from the total amount of \$3,300. There is a balance of \$3,000. I am authorizing the Landlord/Tenant to keep the security deposit amount of \$3,000 and award the balance of \$3,000 for the rent amounts owing.

B. The Tenant D.E.O-W.:

I find the Landlord/Tenant and the Tenant D.E.O-W. agreed on the basic rent amount of \$700. As the Landlord/Tenant listed on their Application for the case of this tenancy, a security deposit amount of \$700 exceeds that allowed by the *Act* s. 19.

The Landlord/Tenant issued the 10-Day Notice to the Tenant D.E.O-W. on May 4, 2023. The Tenant D.E.O-W. did not complete rent payments within 5 days of being served the 10-Day Notice. The Tenant D.E.O-W. confirmed in the hearing that they did not pay rent on the basis that they did not know who their Landlord was and who they should pay the rent amount to. The Landlord/Tenant served the document by registered mail. The Tenant D.E.O-W. had until May 14 to pay rent in full. The Tenant D.E.O-W. did file their Application to challenge the 10-Day Notice within the required period.

I conclude the Tenant D.E.O-W. did not pay the full rent amount as required on the 1st day of the month as per their agreement with the Landlord/Tenant. I dismiss the Tenant D.E.O-W.'s Application. The Tenant D.E.O-W. breached s. 26 of the *Act* and s. 46 is applicable in this situation.

I find the 10-Day Notice the Landlord/Tenant served to the Tenant D.E.O-W. via registered mail on May 4, 2023 complies with the requirements of s. 52 regarding form and content. As per s. 55 of the *Act*, I grant the Landlord/Tenant an order of possession.

As per s. the *Act* s. 55(1.1), I grant the owing rent amounts to the Landlord/Tenant. This is the total amount of \$2,800. The Landlord/Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee to them. This total amount is \$2,900.

I do not set off the Tenant D.E.O-W.'s security deposit because the amount indicated by the Landlord/Tenant on their Application is not legal. I award the full amount of \$2,900 to the Landlord/Tenant.

Conclusion

I dismiss the Tenant P.A.'s and the Tenant D.E.O-W.'s Application for cancellation of the Two-Month Notice, without leave to reapply. There is no refund of the Application filing fee for this Application.

A. The Tenant P.A.

For the reasons outlined above, I dismiss the Tenant P.A.'s Application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the Landlord/Tenant, effective **TWO DAYS** after they serve it to the Tenant P.A. Should the Tenant P.A. fail to comply with this Order, the Landlord/Tenant may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant P.A. to pay the Landlord/Tenant the amount of \$3,000, pursuant to s. 55(1.1) and s. 72 of the *Act*. I grant the Landlord/Tenant a monetary order for this amount. The Landlord/Tenant may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

B. The Tenant D.E.O-W.

For the reasons outlined above, I dismiss the Tenant D.E.O-W.'s Application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the Landlord/Tenant, effective **TWO DAYS** after they serve it to the Tenant D.E.O-W. Should the Tenant D.E.O-W. fail to comply with this Order, the Landlord/Tenant may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant D.E.O-W. to pay the Landlord the amount of \$2,900, pursuant to s. 55(1.1) and s. 72 of the *Act*. I grant the Landlord/Tenant a monetary order for this amount. The Landlord/Tenant may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Direction of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 30, 2023

Residential Tenancy Branch