



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNDCT, RR, AAT, PSF, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant on September 30, 2022, under the *Residential Tenancy Act* (the Act), and three subsequent Amendments to the Application (Amendments). Two hearings were held, and two previous interim decisions were issued, as well as two correction decisions and a corrected interim decision. For the sake of brevity, I will not repeat the facts, issues, and findings of those decisions in detail here. As such, they should be read in conjunction with this decision.

The Landlord CMV, and the Landlord's daughters BDV and RDD attended both hearings. The Tenant's daughter MW AKA MS attended the first hearing on behalf of the Tenant. Constable CM (the Constable) was issued a summons at my discretion and attended the second hearing as a witness via video teleconference. The Tenant did not attend either hearing. Although the Tenant's daughter stated in their affirmed testimony at the first hearing that the Tenant could not attend the hearing due to undisclosed medical reasons, in a correction request from the Tenant dated February 15, 2023, the Tenant stated that they did not attend the first hearing because they were filing their Notice of Civil Claim in the BC Supreme Court in Vancouver.

Although I have reviewed all documentary evidence accepted for consideration and where required, presented by the parties, and the affirmed testimony provided at both hearings, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Preliminary Matter #1 - Evidence

The Landlord and Agents stated at the February 10, 2023, hearing that other than the Tenant's monetary order worksheet and land title documents, they had not received any other documentary evidence from the Tenant. No proof of service documents were submitted by the Tenant or their Agent to satisfy me that the documentary evidence submitted by or on behalf of the Tenant was served as required. As a result, I have excluded from consideration the documentary evidence submitted by or on behalf of the Tenant for my consideration at the first hearing.

In the corrected interim decision dated April 17, 2023, I ordered that the Tenant had until May 3, 2023, to send to the respondent by registered mail and submit to the Residential Tenancy Branch (Branch), any arguments, submissions, and documentary evidence they wished for me to consider in response only to the Police Report disclosed to them by the Branch after the 2nd hearing, and the matters of bias and jurisdiction. I also ordered that the Tenant submit proof of service documents to the Branch for my consideration regarding any evidence served. On May 5, 2023, the Branch received 14 pages from the Tenant by mail for my consideration. On May 10, 2023, the Branch received documents showing that registered mail packages were sent to the Branch and the Landlord's address on May 3, 2023.

The Tenant did not submit a photograph of the evidence that is included in the package and a copy of the delivery status from Canada Post as ordered. I nevertheless deem the Landlord served with the 14-page document package on May 8, 2023, unless earlier received, pursuant to section 90(a) of the Act. As a result, and as I am satisfied that the evidence package was sent to the Branch on May 3, 2023, as ordered, I accept this evidence for consideration. However, as the Tenant was permitted only to submit documentary evidence, arguments, and submissions for consideration in response to the Police Report and regarding the matters of jurisdiction and bias, I have therefore only considered the portions of this package that relate to these matters.

Although the Tenant uploaded further documentary evidence on May 23, 2023, and May 24, 2023, I have excluded this documentary evidence from consideration as it was submitted outside of the timelines set in the corrected interim decision dated April 17, 2023, and I stated in that decision that late evidence would not be accepted or considered.

The Landlord was also permitted to submit additional documentary evidence for my consideration in response to the above noted evidence served on them by the Tenant. However, no additional documentary evidence was submitted by the Landlord for my consideration.

Preliminary Matter #2 - Jurisdiction

The Tenant stated in their written submissions that they entered a rent-to-own, option to purchase, or purchase and sale agreement for the property, which overrides any lease agreement. The Tenant argued that the Act therefore does not apply. I dismiss this argument as without merit as no documentary evidence in support of the existence of such an agreement was submitted, such as copies of a contract of purchase and sale or a rent-to-own agreement.

The Tenant argued that none of the parties present at the hearings on behalf of the respondent were party to the contract or lease agreement, and therefore the lease is invalid. The Landlord and their Agents denied these allegations stating that the Landlord is the property owner, as shown in Land Title documents submitted by the Tenant, and that the Landlord signed the lease agreement with the Tenant. Although the Tenant's daughter argued at the first hearing that the Tenant has been paying rent for the property to someone else whom they believe to be the actual landlord and property owner, no proof of this was submitted, this person was not called as a witness at either hearing, and no request for summons was received by me from or on behalf of the Tenant, asking that I compel this alleged other landlord/property owner to attend the hearing. As a result, I do not accept that the Tenant has been paying rent to another person who is the rightful property owner and landlord.

As set out in the interim decision dated April 5, 2023, the Landlord CMV, and the Agents BDV and RDD attended the in-person hearing on February 10, 2023, and they each presented a photo BC Services Card and a photo BC Driver's License matching their likeness and the names listed for them in this decision. The Constable also stated during their affirmed testimony that the person at the in-person hearing stating that they were the Landlord, whom they could see through a web camera, was the person they interacted with on December 15, 2022, that they saw their identification on that date, and that to the best of their knowledge, they are the Landlord and property owner CMV. As a result, I am satisfied that the Landlord and their Agents are who they say they are,

and I dismiss the Tenant's allegations of identity fraud. I therefore also dismiss the Tenant's argument that the lease agreement is invalid as it was not signed by the Landlord and property owner CMV.

Further to this, I have before me a residential tenancy agreement, on the Branch form, stating that a residential tenancy under the Act commenced on July 1, 2022, between the Tenant CMW and the Landlord CMV, which appears to have been signed by the Tenant on June 25, 2022, and by the Landlord or their agent on June 26, 2022. As a result, I find it more likely than not that a tenancy under the Act exists between the parties.

The Tenant was advised in the interim decision dated April 5, 2023, that simply filing a Notice of Civil Claim and a Judicial Review does not automatically render me without jurisdiction to hear and decide the matters claimed in the Application and Amendments. The Tenant was also provided with an opportunity to make arguments regarding whether I have jurisdiction to decide this matter, and to submit additional documentary or other evidence for my consideration regarding the matter of jurisdiction.

I do not have before me a court order staying this proceeding, and as previously stated, the filing of a Notice of Civil Claim or a Judicial Review does not automatically stay this proceeding. While a court may determine on a consolidation application, whether there is a substantial link between a Branch proceeding and a matter that is before the BCSC, the matter of whether I have jurisdiction under the Act to decide matters brought before me, is also within my jurisdiction to decide. To my knowledge, no such consolidation application has been brought before or decided by the BCSC. As a result, I am not satisfied that the Tenant has properly sought to have these matters consolidated, or received a decision that the court has consolidated them.

Section 58(2)(d) of the Act states that I must not determine a dispute if it is linked substantially to a matter that is before the Supreme Court. However, I do not take this to mean that a party to an Application for Dispute Resolution may have the dispute resolution proceedings stayed or dismissed, simply by filing claims that are squarely within the jurisdiction of the Branch to hear and decide, in the BC Supreme Court. This would be an abuse of process and result in extreme prejudice to the other parties. A party to a tenancy agreement that falls under the jurisdiction of the Act cannot simply delay dispute resolution proceedings or circumvent the Act, by filing a claim elsewhere.

I find that the Tenant's filing of the Notice of Civil Claim and Judicial Review are simply attempts by them to delay the proceedings before me, confuse and complicate the matters, and avoid obligations and responsibilities under the Act. I am also satisfied that the matters claimed in the Application and Amendments, such as cancellation of notices to end tenancy, fall squarely within the jurisdiction of the Branch to hear and decide. As a result, I accept that I have jurisdiction to hear and decide the matters claimed by the Tenant in the Application and Amendments before me, and I dismiss the Tenant's position that I lack jurisdiction due to the Notice of Civil Claim and Judicial Review.

Preliminary Matter #3 – Allegations of Bias

The Tenant alleged in their written submissions that the Landlord, their Agents, and I recognized each other at the second hearing, which constitutes a conflict of interest. While I acknowledge that the Landlord and their Agents stated that they recognized my name and voice from the previous hearing, I disagree that this constitutes a conflict of interest. I have had no contact with the Landlord or their Agents outside of the dispute resolution proceedings, do not personally know them, and have no vested interest in the outcome of this proceeding. As a result, I dismiss the Tenant's argument that there is a conflict of interest because the Landlord and their Agents stated at the second hearing that they recognized my name and voice from the first hearing when I brought them into the hearing room.

The Tenant alleged that the April 5, 2023, interim decision was withheld from them, constituting bias in favor of the Landlord, as the delayed receipt of the interim decision affected their evidence submission timelines. I acknowledge that there was a delay in sending out the second interim decision. However, I am satisfied that the Tenant's concerns and any potential administrative fairness concerns as a result, were addressed in my response to the Tenant's request for correction and the associated corrected interim decision dated April 17, 2023. In the corrected interim decision, I extended the evidence submission deadlines for the parties to ensure the Tenant received the intended amount of time to make submissions regarding the police report, jurisdiction, and bias.

The Tenant also alleged that all participants at the second hearing, including myself and the Constable, knowingly concealed the Landlord's true identity and were aware that the statements made in the Police Report are false. As set out above, I am satisfied that the Landlord and their Agents are who they say they are. I am not aware of or knowingly a

party to, the concealment of anyone's identity. I am also not intentionally concealing any known misrepresentations by the Constable in their Police Report.

The Tenant argued that the Constable failed to inform the Branch of a "conflict of interest (family friends)", which prevented them from attending the second hearing. It is unclear to me from their written submissions whether the Tenant is arguing that I or the Landlord and their Agents, are family friends with the Constable. As a result, I will address both allegations. I am not now, nor have I ever been family friends with the Constable and my only dealings and interactions with them have been in relation to this matter, specifically the issuance of the summons for their attendance, the sending of the invitation to attend the second hearing via teleconference, and the taking of their affirmed testimony at the second hearing. If the Tenant is alleging that that the Constable is family friends with the Landlord and Agents, no documentary or other corroboratory evidence was submitted in support of this allegation. As such, I do not accept that this is the case. Finally, it is not at all clear to me why the Tenant would have been prevented from attending the second hearing even if the above noted allegations were true, which I have found they are not.

The Tenant again argued that I am biased towards the Landlord as I allegedly advised the Landlord and their Agents not to worry about the Notice of Civil Claim at the hearing. I find that this is a misunderstanding of the proceedings, recording, and chain of events on the part of the Tenant. At the outset of the second hearing the Landlord's Agents stated that they had recently been served with court documentation by the Tenant, and wanted to bring it to my attention. I confirmed that what they had received was the Notice of Civil Claim, a copy of which had also been submitted to the Branch by the Tenant. I then advised the Landlord and their Agents not to worry, as the Notice of Civil Claim would come up during the proceedings, which it did during preliminary matters. This comment was intended to convey to the Landlord and their Agents that it was unnecessary to deal with the Notice of Civil Claim at the outset of the hearing, as it would be dealt with during the proceeding in due course. It was not a comment on the Notice of Civil Claim in general. As can be heard in the recording, I also advised the Landlord and their Agents that I would consider the Notice of Civil Claim in relation to jurisdiction only, and that they may wish to seek independent legal advice in relation to the Notice of Civil Claim.

Preliminary Matter #4 – Fraud and Misconduct

The Tenant made many allegations of fraud and misconduct on the part of the Branch and the Constable. However, the Tenant submitted only the following documentary evidence in support of their allegations that the Constable and the Branch had engaged in fraud and/or misconduct:

- 6 pages of largely illegible print outs from justice.gov.bc.ca which appear to be search results; and
- 5 pages of decisions from the law society of BC.

As the search results from justice.gov.bc.ca were largely illegible, I was unable to read the majority of the information contained in these documents. However, they appear to relate to people other than those named as the Landlord in the Application, or their Agents. I am also unclear on the relevance of the law society documents as they too appear to relate to people other than the Landlord, the tenant, or the agents of either party. While I understand that the Tenant believes that the persons present at the hearings purporting to be the Landlord and their family members are committing identity fraud, as set out above, I am not satisfied that this is the case. Further to this, the Tenant has not submitted any documentary or other evidence that satisfies me on a balance of probabilities that there is any link between the identities of the people named in the justice.gov.bc.ca documents or the law society decisions submitted, and the parties named in the Application before me. As a result, I dismiss the Tenant's allegations of fraud and misconduct on the part of the Branch and the Constable.

In any event, section 75 of the Act states that I may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding. As a result, I have accepted the Police Report for consideration and have weighed its credibility and reliability as necessary and as set out in this decision.

Preliminary Matter #5 – March 2, 2023, Amendment

The Tenant submitted an Amendment dated March 2, 2023. In the Amendment the Tenant sought to:

- add or change a monetary claim;
- dispute a 10 Day Notice allegedly served March 1, 2023; and

- obtain an order that the Landlord comply with the Act, regulation, or tenancy agreement.

As the Landlord and Agents denied receipt of this Amendment, and no proof of service documents were submitted by the Tenant or their Agent to satisfy me that the documentary evidence submitted by or on behalf of the Tenant was served as required, I have not amended the Application to include these matters.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of any or all of the notices to end tenancy?

If not, is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

Is the Landlord entitled to recovery of unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

The residential tenancy agreement, which is on the #RTB-1 form, states that the one-year fixed-term tenancy between the Landlord CMV and the Tenant CMW, commenced on July 1, 2022, and may continue on a month-to-month basis after the expiration of the fixed-term on June 30, 2023. The tenancy agreement states that \$2,600.00 in rent is due on the 30th day of each month, which includes the following utilities:

- water;
- garbage collection;
- recycling services; and
- kitchen scraps collection.

The tenancy agreement appears to have been signed by or on behalf of the Landlord on June 26, 2022, and the Tenant on June 25, 2022. The Landlord and Agents stated that all other utilities were billed to the Landlord and that the Tenant was responsible for paying these amounts to the Landlord once they were provided with the bill. An addendum to the tenancy agreement in support of this testimony was submitted for my consideration.

The Landlord and Agents stated that several notices to end tenancy have been served for unpaid rent and cause as follows:

- The One Month Notice was personally served on the Tenant on October 19, 2022, for having an unreasonable number of occupants in the rental unit, failing to complete required repairs, and because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed the Landlord, seriously jeopardized the health or safety or lawful right of the Landlord, and put the Landlord's property at significant risk;
- 10 Day Notice #1 was sent by email on October 31, 2022; for \$2,600.00 in rent due on October 30, 2022;
- 10 Day Notice #2 was sent by email on December 31, 2022, for \$2,600.00 in rent due on December 30, 2022; and
- 10 Day Notice #3 was sent by email on January 31, 2023, for \$2,600.00 in rent due January 20, 2023, and \$161.56 in outstanding utilities for which a demand letter was issued on December 31, 2022.

The Landlord and Agents stated that although only the Tenant was permitted to reside in the rental unit under the tenancy agreement, the Tenant's daughter, who attended the first hearing on the Tenant's behalf, has moved into the rental unit with their three

children. The Landlord and Agent stated that the Tenant has failed to keep the rental unit reasonably clean, as it is messy and cluttered. The Landlord and Agents stated that although they gave the Tenant notice to clean the rental unit, they have not done so, which is a breach of the Act, a safety concern, and a risk to the property as exits are being blocked. The Landlord and Agents stated that although they served the Tenant with a 24-hour written notice of entry on October 6, 2022, they Tenant denied them access at the time of the inspection.

The Landlord and Agents stated that the Tenant has also been making changes to the property without permission, such as removing doorknobs and changing locks, and has damaged a structural pole. The Landlord and Agents stated that they fear that the Tenant is further damaging the property without their knowledge, as they are refusing access for inspections.

The Landlord and Agents stated that the Tenant paid \$2,702.00 on November 30, 2022, for outstanding rent and utilities, but that as of the date of the second hearing, March 13, 2023, the Tenant still owed \$7,800.00 in outstanding rent for the period up to and including March 29, 2023, plus \$161.56 in outstanding utilities. The Landlord and Agents stated that the last payment made by the Tenant was on November 30, 2022, and that the Tenant has made no further payments towards either rent or utilities. The Landlord therefore sought an order of possession for the rental unit as soon as possible, as well as recovery of unpaid rent and utilities.

Analysis

Based on the residential tenancy agreement and addendum before me, the affirmed testimony of the Landlord and Agents, and the identification presented by the Landlord and Agents at the March 13, 2023, in-person hearing, I am satisfied that a tenancy to which the Act applies exists between the parties. I am also satisfied that \$2,600.00 in rent is due on the 30th day of each month, or the last day of the month where there is no 30th day, and that the Tenant is responsible to pay the Landlord for their utility usage within 30 days of being provided with a copy of the utility bill and a demand letter for payment.

Although the Tenant sought cancellation of the One Month Notice and all three 10 Day Notices, they failed to appear at either hearing. Although the Tenant's daughter MW appeared on the Tenant's behalf at the first hearing, no one attended the second hearing on behalf of the Tenant, where the substantive matters of the Application were

heard, specifically the validity of the notices to end tenancy. Although I ordered the Tenant and their daughter MW to call as a witness at the hearing on March 13, 2023, the person MW alleged the Tenant had paid rent to, they did not do so. They also did not submit a written request for me to issue a summons to this person for their attendance if they declined to attend voluntarily, which I ordered them to do in the interim decision. As a result, I dismiss the statement made by MW at the first hearing that the Tenant has been paying rent to someone else whom they believe to be the legitimate landlord, as entirely without merit. I have therefore not considered this argument in assessing the validity of the 10 Day Notices.

Based on the affirmed and undisputed testimony of the Landlord and Agents at the second hearing, and the documentary evidence before me from the Landlord, I accept as fact that:

- the notices to end tenancy were served as previously set out in this decision;
- no rent has been paid since November 30, 2022;
- a written demand letter was issued to the Tenant on October 31, 2022, for the payment of \$161.56 in utilities, along with a copy of the relevant utility bill(s);
- the Tenant has not paid any amount towards utilities since the demand letter was issued;
- the Tenant has failed to maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit; and
- the Tenant has not repaired damage to the rental unit caused by their actions or neglect, or the actions or neglect of persons permitted on the residential property by them.

As the Tenant disputed the One Month Notice and all three 10 Day Notices, I accept that they were received by the Tenant. I also find that all four notices comply with section 52 of the Act.

Although the Landlord and Agents argued that the Tenant has permitted an unreasonable number of occupants in the rental unit, I am not satisfied this is the case based on the number of occupants and the fact that the property is a single-family home with 5 bedrooms. I am nevertheless satisfied that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of the Landlord by refusing the Landlord and their Agents access to the property upon proper written notice under section 29 of the Act, and altering the property without the Landlord's consent. I am also satisfied that the Tenant has put the Landlord's property at significant risk by damaging a structural post and blocking entry and egress points

with their possessions. As a result, I am satisfied that the Landlord has grounds to end the tenancy pursuant to sections 47(1)(d)(ii) and 47(1)(d)(iii) of the Act, and I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

I am also satisfied that the Landlord has grounds to end the tenancy pursuant to section 46 of the Act, as I am satisfied that the Tenant has failed to pay the rent owed on each of the 10 Day Notices within the timeline set out under section 46(4)(a) of the Act. Although the Tenant disputed the 10 Day Notices within the timeline set out under section 46(4)(b) of the Act, I am satisfied the rent was not paid. I am also satisfied that the Tenant did not have grounds to withhold or deduct this rent under the Act. As a result, I dismiss their Applications/Amendments seeking cancellation of these notices to end tenancy without leave to reapply.

As the effective dates of all four of the notices to end tenancy have passed, and as I am satisfied that they comply with section 52 of the Act, I therefore grant the Landlord an order of possession for the rental unit effective two days after service on the Tenant, pursuant to section 55(1) of the Act. Pursuant to section 55(1.1) of the Act, I also grant the Landlord recovery of \$7,800.00 in outstanding rent for the period up to and including March 29, 2023, and \$161.56 in outstanding utilities that I find the Landlord was entitled to treat as unpaid rent pursuant to section 46(6) of the Act.

The Landlord remains entitled to seek recovery of any additional outstanding rent, utilities incurred after March 29, 2023, or compensation for overholding of the rental unit, from the Tenant by filing an Application for Dispute Resolution with the Branch, should they wish to do so. This is not an extension of any statutory time limit.

As the Tenant was unsuccessful in their Application and Amendments seeking cancellation of the One Month Notice and the 10 Day Notices, I decline to grant them recovery of their filing fee.

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective **two (2) days after service of this order** on the Tenant. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of **\$7,961.56**. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 7, 2023

Residential Tenancy Branch