



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC, RR, PSF, LRE, FFT

Landlord: OPR, OPC, MNRL, MNDCL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55;
- an order of possession under a One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to sections 47 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

The tenant's application pursuant to the Act is for:

- cancellation of the One Month Notice, pursuant to section 47;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant amended the application on May 20, 2023 seeking the cancellation of the 10 Day Notice and a new order for the rent reduction. The tenant signed and registered mailed the amendment on May 20, 2023. The landlord confirmed receipt of the amendment in late May 2023.

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 10 day notice, the One Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the One Month and 10 Day notices to end tenancy?
2. An authorization to recover the filing fee?

Is the landlord entitled to:

1. An order of possession based on the One Month or the 10 Day notices to end tenancy?
2. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the notices to end tenancy.

Both parties agreed the tenancy started on January 15, 2002. Monthly rent is \$798.00, due on the first day of the month. The landlord holds in trust the \$325.00 deposit. The tenancy agreement was submitted into evidence. It states that rent is due on the first day of the month.

The landlord attached the One Month Notice to the tenant's front door on February 03, 2023 at 1:46 pm. The tenant found the One Month Notice a few days after February 03, 2023.

The tenant submitted the application on February 15, 2023 and continues to occupy the rental unit.

The parties submitted the One Month Notice into evidence. It is dated February 03, 2023 and the effective date is February 16, 2023. The reason to end the tenancy is: "the tenant is repeatedly late paying rent: Tenant is repeatedly late paying rent as follows: Nov 2022, Jan 2023 and Feb 2023".

The parties agreed the tenant paid rent on November 04, 2022, January 02 and February 02, 2023.

The tenant affirmed that he had a verbal agreement with the prior landlord to pay rent on the 15th day of the month. The current landlord purchased the rental building on October 06, 2022 and informed the tenant in writing on November 04, 2022 that rent is due on the first, as indicated in the tenancy agreement.

The landlord registered mailed the 10 Day Notice to the tenant on May 02, 2023. The tenant confirmed receipt of the 10 Day Notice on May 06, 2023.

The parties submitted the 10 Day Notice into evidence. It is dated May 02, 2023 and the effective date is May 17, 2023. It states the tenant failed to pay \$399.00 due on May 01, 2023.

The tenant affirmed that he only paid \$399.00 for rent on May 01 and June 01, 2023 because the rental unit is unliveable, due to mould. The tenant did not pay for emergency repairs.

Analysis

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the notices to end tenancy.

One Month Notice

Section 90(c) of the Act states that documents attached to a door are deemed served three days later.

Based on the landlord's convincing and detailed testimony, I deem the tenant received the One Month Notice on February 06, 2023.

I find the tenant disputed the One Month Notice before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Section 47(1)(b) of the Act allows a landlord to end a tenancy if the tenant is repeatedly late paying rent.

Residential Tenancy Branch (RTB) Policy Guideline 38 states: "Three late payments are the minimum number sufficient to justify a notice under these provisions."

Based on both parties' uncontested testimony, I find the tenant had a verbal agreement with the prior landlord to pay rent on the 15th calendar day of the month, despite the tenancy agreement indicating that rent is due on the first.

As the parties only agreed that rent is due on the first day of the month on November 04, 2022, the rent paid in November can not be considered late.

Based on both parties' uncontested testimony, I find the tenant paid rent late in January and February 2023. As the tenant paid rent late less than three times before the

landlord served the One Month Notice, the landlord may not end the tenancy under section 47(1)(b) of the Act.

As such, I find the landlord failed to prove, on a balance of probabilities, the ground of the Notice.

Accordingly, the Notice is cancelled and of no force or effect.

Ten Day Notice

Based on the uncontested testimony, I find the tenant received the 10 Day Notice on May 06, 2023.

Sections 46(4) and (5) of the Act state the tenant must dispute a 10 Day notice to end tenancy within five days after receiving the notice to end tenancy:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Section 46(4) and (5) is mandatory, and I do not have discretion as to its application. I find the tenant disputed the 10 Day Notice late, as the tenant confirmed receipt of the 10 Day Notice on May 06, 2022 and only amended the application to dispute the 10 Day Notice on May 20, 2022.

I dismiss the tenant's application for an order for the cancellation of the 10 Day Notice, as it was submitted after the five-day deadline to dispute the Notice, in accordance with section 46(4) of the Act.

I find the 10 Day Notice is in accordance with section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, states the effective date, the ground to end the tenancy and it is in the approved form.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice (May 17, 2023) and must move out of

the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act.

I accepted the uncontested testimony that the tenant only paid \$399.00 for rent on May 01 and June 01, 2023 and that monthly rent is \$798.00.

Per section 55(1.1), I award the landlord the balance of unpaid May Rent of \$399.00 and June rent of \$399.00. Thus, I award the landlord \$798.00.

For education purposes, the Act only allows the tenant to withhold rent on four occasions:

1. Section 19(2): When a landlord collects a security deposit or pet damage deposit that is above the permitted amount.
2. Section 33(7): When the tenant paid for emergency repairs.
3. Section 43(5): When a landlord imposes a rent increase that is above the amount allowed by law.
4. Section 51(1.1): When the landlord issues a notice to end tenancy under section 49 of the Act.

Effective date of the Order of Possession

RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession, considering the length of the tenancy. I note that I ordered the tenant to pay rent in full until the end of June 2023.

Considering the tenant has been occupying the rental unit since January 2002, I find it reasonable to extend the effective date of the order of possession to June 30, 2023.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Filing fee and deposit

As both parties were partially successful, each party will bear their filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to

the landlord. I order the landlord to retain the deposit of \$325.00 in partial satisfaction of the monetary award.

Conclusion

Both parties are at liberty to submit monetary claims regarding this tenancy, except claims regarding unpaid rent.

The One Month Notice is cancelled.

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlord effective **on June 30, 2023**. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia

Pursuant to section 55(1.1) of the Act, I authorize the landlord to retain the deposit of \$325.00 in partial satisfaction of unpaid rent and grant the landlord a monetary order in the amount of \$473.00 for unpaid rent. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord must serve the tenant **the order of possession and monetary orders** in two calendar days after the date of this decision, in accordance with section 88 of the Act.

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 12, 2023

Residential Tenancy Branch