



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNR, MNRT, MNDCT, DRI, RR, RP, OLC, FFT
Landlord: OPU-DR, MNU-DR, FFL / OPU, MNRL-S, MNDL-S,
MNDCL-S, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act);
- \$2,000.00 compensation for the cost of emergency repairs under section 67 of the Act;
- \$20,000.00 compensation for monetary loss or other money owed under section 67 of the Act;
- to dispute a rent increase under section 43 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 comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act

In their first Application the Landlord seeks the following:

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent under section 55(4) of the Act;

- a Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act; and
- to recover the filing fee for their Application from the Tenant under section 72 of the Act

The Application was made by way of an *ex parte* Direct Request. During the direct request proceeding it was determined by the Adjudicator that the tenancy agreement was not signed by the Tenant, which is a requirement of the direct request procedure. As the Landlord had made a second Application, it was ordered that the proceeding be joined with that Application and adjourned and reconvened as participatory hearing under section 74 of the Act.

In their second Application the Landlord seeks the following:

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent under section 55(4) of the Act;
- a Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act;
- \$20,000.00 in compensation from the Tenant for damage caused during the tenancy under section 67 of the Act;
- \$5,910.00 in compensation for my monetary loss or other money owed under section 67 of the Act;
- authorization to retain the security deposit under section 38 of the Act; and
- to recover the filing fee for their Application from the Tenant under section 72 of the Act

Both the Tenant and the Landlord attended the hearing. The Landlord was assisted by a translator. 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.

The Tenant testified they served the Notice of Dispute Resolution Package (Materials) on the Landlord on April 23, 2023 via registered mail. Further evidence was served to the Landlord via registered mail on May 17, 2023. The tracking numbers are provided on the front page of this Decision. A final batch of evidence on a USB memory stick was served to the Landlord via registered mail on May 25, 2023. The Landlord testified they received the Tenant's evidence at the end of April and didn't know what it was as no Notice of Dispute Resolution Proceeding was included at that time, it was included in

the package that arrived at the end of May. The Tenant was certain they had included the Notice of Dispute Resolution Proceeding in their initial mailed item to the Landlord.

As the Landlord confirmed receipt of the Materials and raised no issues or potential prejudice caused by any delays in service, I find the Tenant's Materials were sufficiently served to the Landlord in accordance with section 71(2)(b) of the Act.

The Landlord testified they served the Materials for their first Application on the Tenant via registered mail on July 27, 2023 and the Materials for their second Application by registered mail on May 3, 2023. Copies of the receipts and tracking numbers were entered into evidence by the Landlord. The tracking numbers are included on the front page of the Decision.

The Landlord also served the Tenant by email on April 26, 2023 for the Materials for the first Application and on May 1, 2023 for the second Application. An Address for Service (form RTB-51) signed by both parties dated April 20, 2022 was entered into evidence by the Landlord. Copies of emails to the Tenant were also entered into evidence. I find the email address used matches that on the Address for Service Form.

The Tenant denied receiving the Landlord's Materials via either method and said he did not get any notifications from Canada Post. The Tenant said they no longer accepted documents via email from the Landlord and the police had told the Landlord to stop contacting the Tenant via email. The Landlord denied the Tenant's claims. The Tenant also did not present any evidence to indicate they rescinded the agreement between the parties to serve documents via email. Based on the above, I find the Landlord served the Materials for both Applications onto the Tenant in accordance with section 89 and 90 of the Act.

Preliminary Issue: Severing

The Tenant and the Landlord 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 both parties, I determined that the primary issue is the Tenant's request to cancel the Notice and the Landlord's request for an Order of Possession and Monetary Order after issuing 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 November 30, 2017.
- Rent is \$3,805 per month due on the first day of the month.
- A security deposit of \$1,800.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The tenancy agreement shows a second party listed as a tenant but both parties agreed that this party vacated the rental property many years ago and the Tenant is the sole Tenant.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. The Tenant has not paid utilities since January 2022. The Tenant also did not pay the full amount of rent for April 2021 or March 2023. The Tenant paid \$2,000.00 for the rent due March 1, 2023 so still owes \$1,805.00. The Landlord had issued the Tenant 6 Notices to End Tenancy for Unpaid Rent throughout the tenancy until that point, which the Tenant ignored.

The Landlord made an application for dispute resolution relating to one of the 10 Day Notices to End Tenancy last year, but it was dismissed. The file number for this application is included on the front page of this Decision. I note the application, which

was crossed with the Tenant's application to be heard simultaneously at a hearing on September 2, 2022, was dismissed as the Arbitrator found both parties had failed to disclose the full particulars of their disputes.

The Tenant also owes \$1,000.00 for rent due April 1, 2021 which the Landlord had served 10 Day Notices to End Tenancy for Unpaid Rent for which the Tenant again ignored.

A written demand for the utilities was sent to the Tenant via email on February 20, 2023. The Landlord served the Notice on March 22, 2023 by placing a copy in the Tenant's mailbox. They had tried to serve the Tenant in person, but they refused to accept the document. The Tenant still owes a total of \$2,805 for unpaid rent and \$3,720.60 for unpaid utilities and the Tenant had made the payments for rent due from April 1 to June 1, 2023 inclusive. The Landlord also served 10 Day Notices to End Tenancy in April and May 2023 as the Tenant had not paid the rent and utilities owing on the Notice.

A copy of the Notice was entered into evidence by the Landlord. It is signed and dated March 21, 2023 and provides an effective date of March 31, 2023. The amount of rent due is given as \$2,805.00 and unpaid utilities are listed as \$3,720.60 following a written demand on February 20, 2023. A copy of the emails requesting payment for utilities were entered into evidence by the Landlord as well as a witnessed Proof of Service (RTB-34) form which indicates the Notice was served on March 22, 2023 by placing a copy in the mailbox of the rental unit.

The Tenant testified as follows. They are up to date with rent and have been for all five years of the tenancy. They pay rent in two installments by e-transfer as the monthly rent is above the amount their bank permits them to transfer in one day.

The Tenant stated they had approval from the Landlord to withhold the \$1,000.00 due April 1, 2021 as they had to have emergency work done on the sewage system in the rental property. The Tenant discussed the matter with the Landlord on April 26, 2021 via telephone when the Landlord was in China. The Landlord gave verbal approval during the conversation for the Tenant to withhold \$1,000.00 from rent for April 2021.

The Tenant stated that rent for March 2023 was paid in full and if it did not go through, he can re-send it again.

The Tenant confirmed they did withhold rent in the past to “get the Landlord’s attention” regarding issues with the rental property and the conduct of the tenants in the suite below them. They also confirmed they do owe the Landlord for outstanding utilities but did not know the amount. Utilities have not been paid from April 2022 to the present day as they disagree with the portion they have to pay to the Landlord.

When the tenancy agreement was signed there were fewer people living in the lower suite. Now there are more people and they do not have jobs so stay in all day, play music and do laundry. The Tenant is out at work all day so does not use as much electricity as them. The tenancy agreement provides that the upper unit, which the Tenant occupies, pays two thirds of the utilities and the lower suite pays one third. They have tried to speak with the Landlord about the portion of utilities they pay, and the Landlord refused to talk about it.

The Tenant does not recall receiving the Notice as the Landlord drops off a lot of papers and asks them to sign for them. I asked the Tenant if they had a copy of any of the Notices to End Tenancy for Unpaid Rent in their possession and they said they were not sure as they have so much paperwork. The Tenant did not provide a copy of the Notice to End Tenancy they wished to dispute, though their Application indicates the Notice they are disputing was received April 12, 2023 via registered mail.

In response to the Tenant’s testimony the Landlord pointed out that the Tenant had paid the first installment of rent on April 1, 2021 and included a message with the e-transfer saying they still owe \$1,000.00. A copy of the email confirming the e-transfer showing the message from the Tenant was entered into evidence by the Landlord. The conversation regarding the issue with the sewage took place on April 26, 2021 so rent should have been paid by then. The Landlord denied giving authority to withhold \$1,000.00 from rent.

The Landlord stated that the split in utilities was determined by the area of the suites, not the number of occupants. The upper suite is twice as big as the lower suite so the portion they pay is double the amount of the lower suite as the biggest expense is typically heating during the winter months. They never checked on the number of occupants as they both could have guests stay.

The Landlord reiterated that the amount owing for March 2023 was still \$1,805.00 and it was not paid by the Tenant. Reminders had been issued to the Tenant to let them know it was still owed and further 10 Day Notices to End Tenancy for Unpaid Rent were

issued in April and May 2023. They did not issue a Notice to End Tenancy in June 2023 as the hearing was to take place soon.

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 Regulation;
- When a tenant has received a Two Month Notice to End Tenancy for Landlord's Use and they withhold the last month's rent under section 51.4(2) of the Act;
- If the landlord gives authorization to not pay rent; or
- As ordered by the Director.

The Tenant stated they had authorization from the Landlord to withhold \$1,000.00 from the rent due April 1, 2021. They stated the authorization was provided during a telephone call on April 26, 2021. The Landlord denies giving the authority. I find the Tenant bears the onus to prove, on the balance of probabilities, that they had authority from the Landlord to withhold this amount of rent.

I found that none of the evidence I was referred to by either party showed authority had explicitly been given in writing for the Tenant to withhold rent. I find the record of the e-transfer on April 1, 2021 submitted by the Landlord shows the Tenant made the payment for rent with an accompanying message stating they still owe the Landlord \$1,000.00 in rent. I find the telephone conversation the Tenant states the authority was given took place on April 26, 2021 which is a considerable amount of time after rent was due. I also find that the Landlord has issued at least 6 Notices to End Tenancy with the \$1,000.00 due July 1, 2021 listed as outstanding rent. Given this, I find that the Tenant has failed to prove on the balance of probabilities that they had authority from the Landlord, either in writing or verbal, to withhold \$1,000.00 from the rent due July 1, 2021.

As the repairs that took place in April 2021 referenced by the Tenant relate to damaged or blocked water or sewer pipes or plumbing fixtures, it is possible that Tenant had the right under section 33(7) of the Act to withhold rent. However, I was not referred to any evidence by the Tenant that indicated a written account of the emergency repairs required along with a receipt for the amount claimed was provided to the Landlord. Therefore, per section 33(6)(b) of the Act, I find the Tenant was not entitled to withhold rent in relation to the repairs.

Given the above, I find that the Tenant was obligated to pay \$1,000.00 to the Landlord due on April 1, 2021.

The Tenant stated they had paid the second installment of rent due on March 1, 2023 of \$1,805.00. However, the Tenant did not refer me to any evidence, such as an e-transfer confirmation or banking records to support their assertion. I found the Tenant's testimony regarding this payment of rent to be vague and non-committal as they stated they in fact had made the payment of \$1,805.00, but if they hadn't they would be able to make the payment. The Landlord provided evidence that the first installment of \$2,000.00 was paid and had issued two Notices to End Tenancy referencing the amount still owing of \$1,805.00. Given this, I find on the balance of probabilities that the Tenant did not pay \$1,805.00 of the rent due on March 1, 2023.

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.

As indicated above, I find that the Tenant did not pay \$1,000.00 rent due on April 1, 2021 and \$1,805.00 due March 1, 2023. Based on the testimony and evidence of both parties, I find neither of the payments were made by the Tenant. 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. I also find, on the balance of probabilities, that the Landlord served the Tenant with the Notice in accordance with section 88 of the Act. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

The Notice was served on March 22, 2023 by placing a copy in the mailbox of the rental unit, therefore would have been deemed received on March 25, 2023, the third day after it is left in the mailbox in accordance with section 90 of the Act. Section 53 of the Act

provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read April 4, 2023 instead of March 31, 2023.

Based on the testimony of both parties, I find the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act. I find the Tenant made payments to the Landlord for rent due April 1 to June 1, 2023, though did not clear the arrears. Because the Landlord accepted payments from the Tenant after the effective date of the Notice, I must consider if the Landlord reinstated the tenancy. I found no evidence of receipts for "use and occupancy only" being issued to the Tenant, however I find the Landlord issued two further 10 Day Notices to End Tenancy for Unpaid Rent after the Notice was issued. I find given this, and the time and resources the Landlord has invested into their Applications, indicate to me that the Landlord has not waived their right to rely on the Notice or reinstated the tenancy.

Based on the above findings, the Landlord is entitled to an Order of Possession under section 55(1) of the Act. As the deemed effective date of the Notice has passed (April 4, 2023), I grant the Landlord an Order of Possession effective two days after service.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. As I have found that the Tenant did not pay \$1,000.00 rent due on April 1, 2021 and \$1,805.00 due March 1, 2023, the Tenant is ordered to pay \$2,805.00 in unpaid rent to the Landlord.

Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utilities to the landlord and if the utilities go unpaid for more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utilities as unpaid rent and may give the tenant a Notice to End Tenancy.

I find that per the tenancy agreement, the Tenant was obligated to pay two thirds of the utility bill to the Landlord. I also find that the Landlord provided a written request for the outstanding utilities consistently over the course of the tenancy and the outstanding amount listed on the Notice was requested over 30 days before the Notice was issued, so the Landlord is entitled to treat the unpaid utilities as unpaid rent.

Based on the testimony of the Tenant, I find that they did not pay the outstanding utilities as they disagreed with the portion they pay under the tenancy agreement,

however I can not find any records of them applying for dispute resolution regarding this issue, rather they withheld payments for utilities. Given the above, I find the Tenant is obligated to pay the Landlord \$3,720.60 for unpaid utilities.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain the Tenant's security deposit of \$1,800.00 as partial satisfaction of the payment order.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee for one of their Applications in accordance with section 72 of the Act. I find the Landlord is entitled to recover the cost of the filing fee for only one of their Applications as I find it was unnecessary for the Landlord to make two Applications in this case.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Tenant's Application is dismissed.

The Landlord's Applications are granted.

I issue an Order of Possession to the Landlord effective 2 days after service upon the Tenant. 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 Tenants. 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	\$2,805.00
Unpaid utilities	\$3,720.60
Filing fee	\$100.00
Less: security deposit	(\$1,800.00)
Total	\$4,825.60

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: June 22, 2023

Residential Tenancy Branch