



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, FFT / OPR-DR, MNR-DR, 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);
- Compensation for monetary loss or other money owed under section 67 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlord requests the following:

- An Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- A Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act; and
- Authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act

The Tenant attended the hearing. The deceased Landlord's Representative and their Agent attended the hearing. 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.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these Materials as required under sections 88 and 89 of the Act.

Preliminary Issue: Naming of the Landlord

I accept both parties' undisputed testimony that the owner of the rental unit, GC, passed away in March 2023. GC's sister, WC, testified they have applied for a grant of administration and the matter is presently with the Supreme Court of British Columbia. Though no grant of administration had been issued, a letter from counsel for the estate of GC was provided into evidence to verify that WC has applied for the grant of administration and is dealing with matters relating to the rental unit.

Section 1(a) of the Act defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Section 1(b) of the Act further defines a landlord as the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a).

Given this, and the provisions in section D of Policy Guideline 43 Naming Parties, I amend the Applications under the authority set out in section 64(3)(c) of the Act to amend the Landlord's name to WC, as Personal Representative of the Estate of GC, Deceased.

Preliminary Issue: Severing

The Tenant 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 the Tenant, I determined that the primary issue is the Tenant's request to cancel 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?
- 4) Are either party entitled to recover the cost of the filing fee?

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 27, 2021.
- Rent is \$2,000.00 per month due on the first day of the month.
- A security deposit of \$1,000.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. They seek an Order of Possession and Monetary Order as the Tenant has failed to pay rent despite repeated requests.

The Notice was served to the Tenant on May 7, 2023. The Tenant had made a claim for compensation of \$8,000.00 from the Landlord on April 19, 2023 and said they did not need to pay rent. The Tenant's claim related to items of GC's that were stored in the den within the rental unit. These items had been present since the start of the tenancy and there had been no objection to the items' presence until GC passed away. There was also no record of the Tenant making any complaints to the Landlord during the tenancy regarding the items.

Since the Notice was issued the Tenant has not made any rent payments. The amount of outstanding rent is \$4,000.00 as of June 1, 2023.

A copy of the Notice was entered into evidence by both parties. The Notice is dated May 5, 2023 and provides an effective date of May 15, 2023. The outstanding rent is listed as \$2,000.00 as of May 1, 2023.

The Tenant testified as follows. They agreed that they had not paid rent for two months now. They paid rent on time for over a year even though the den was not cleared of GC's items. At the start of the tenancy GC had said they would remove the items but only took some smaller things. They telephoned GC to ask them to remove the rest of the items but they kept stalling.

They filed an application with the Residential Tenancy Branch regarding the items in the den on April 19, 2023 and the dispute will be heard on November 24, 2023. They were hoping to use the den as a home office and stopped paying rent to "push" the Landlord to remove the items. The Tenant confirmed they did not have an agreement with the Landlord to withhold rent in any amount.

The Tenant stated that as they did not sign the tenancy agreement they should not have to be bound by the terms.

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 *Residential Tenancy 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 put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Based on the Tenant's own testimony, there

was no agreement from the Landlord or their representative for rent to be withheld. Though the Tenant has applied for compensation from the Landlord, the hearing has not yet been held, therefore no decision has been made by the Director which authorizes them to withhold rent. Therefore, I am satisfied that rent in the amount of \$2,000.00 was due on May 1, 2023.

Though the Tenant argued they should not be bound by the terms of the tenancy agreement as they did not sign it, the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Given the extensive history of rent payments from the Tenant to the Landlord, I find there is a tenancy agreement in place in this case and the Tenant should be bound by the terms, which, by their own testimony, includes paying rent on the first day of the month.

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.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on May 1, 2023. 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. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

The Notice was served on May 7, 2023 in-person, therefore would have been deemed received on the same day it is served 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 May 17, 2023 instead of May 15, 2023.

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 (May 17, 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. Therefore, the Tenant is ordered to pay \$4,000.00 in unpaid rent to the Landlord.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain the Tenant's security deposit of \$1,000.00 as partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant.

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

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 in accordance with section 72 of the Act.

Conclusion

The Landlord's Application is granted.

The Tenant's Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. 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 and must be served on the Tenant. 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	\$4,000.00
Filing fee	\$100.00
Less: security deposit	(\$1,000.00)
Total	\$3,100.00

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 26, 2023

Residential Tenancy Branch