



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Cap J Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, OLC, FFT
 CNR
 OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

In the tenant’s first application they applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

In the tenant’s second application they applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act

The landlord applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act

- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

AW (the “Tenant”) appeared at the hearing with SK appearing as their support person. JS appeared as agent for the corporate landlord.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

As both parties were in attendance, I confirmed that there were no issues with service of the Tenant’s Notice of Dispute Resolution Proceeding packages and evidence. In accordance with sections 88 and 89 of the Act, I find that the landlord was served with the Tenant’s application materials and evidence.

The parties further confirmed that the Tenant was served with the landlord’s evidence in response to the Tenant’s applications. However, the Landlord was unable to confirm that they served the Tenant with their Notice of Dispute Resolution Proceeding Package and the Tenant testified that they were not served.

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. Section 89 of the Act describes the manner in which service of an application for dispute resolution can be completed.

Based on the foregoing, I find that the landlord has not provided sufficient evidence to prove that they served their Notice of Dispute Resolution Proceeding Package in accordance with section 59 or 89 of the Act. On that basis, the landlord’s application is dismissed in its entirety with leave to reapply.

Preliminary Matters

The Tenant applied for orders in addition to cancellation of the 10-Day Notices. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in

the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, I find the most important issue to determine is whether or not the 10-Day Notices should be cancelled. I find the Tenant’s additional claims are unrelated to this issue. Therefore, the following claims made by the Tenant are dismissed with leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act

Issues to be Decided

Should either of the landlord’s 10 Day Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties agreed to the following details of the tenancy. The parties entered into a written tenancy agreement starting April 1, 2023. Monthly rent is \$2,050.00 and is payable on the first of each month. The tenant paid the landlord a security deposit in the amount of \$1,000.00 and a pet deposit in the amount of \$500.00, which the landlord continues to hold in trust for the Tenant.

JS testified that they served the Tenant with a 10-Day Notice on May 11th, 2023, by pre agreed email and by hand delivery. The Tenant acknowledged receipt of the 10-Day Notice by pre-agreed email and by delivery to their mail slot.

JS testified that they served the Tenant with the second 10-Day Notice on June 2nd, 2023, by pre-agreed email and by hand delivery. The Tenant acknowledged receipt of the second 10-Day Notice by pre-agreed email on June 2, 2023, and by delivery to their mail slot on June 3, 2023.

JS testified that the first 10-Day Notice was issued on May 11th, 2023, because the Tenant failed to pay rent that was due May 1, 2023. The 10-Day Notice is submitted into evidence and indicates that it was issued because the Tenant failed to pay rent in the amount of \$2,050.00 that was due May 1, 2023.

JS testified that they issued the second 10-Day Notice on June 2, 2023, because the Tenant failed to pay rent that was due June 1, 2023. The second 10-Day Notice is submitted into evidence and indicates that it was issued because the Tenant failed to pay rent in the amount of \$4,100.00 that was due June 1st, 2023. JS testified that at the time the second 10-Day Notice was issued rent was outstanding for May and June 2023.

JS testified that the Tenant has since made two payments. The first payment was made on June 13th, 2023, in the amount of \$2,050.00 and the second payment was made on June 30th, 2023, in the amount of \$2,050.00. JS testified that currently rent is outstanding for July 2023 in the amount of \$2,050.00. JS testified that they issued a further 10-Day Notice on July 4, 2023.

JS testified that the landlord is seeking an order of possession and monetary order for unpaid rent.

In response to JS's testimony, the Tenant testified that they initially withheld rent because they believed they were entitled to do so for emergency repairs given their concerns surrounding bed bugs. However, they agreed with SP that they have since paid two months' rent.

However, the Tenant testified that they believe they are entitled to withhold rent based on a conversation they had with the property manager on May 4, 2023. The Tenant directed my attention to a recording of the conversation and transcript of the conversation which they have included in the evidence.

The Tenant testified that based on the conversation with the property manager they believed they were authorized to withhold May's rent because of what they went through with the bed bugs. The Tenant testified that the property manager did not indicate to them that withholding May's rent was contingent upon them signing a Mutual Agreement to End Tenancy.

In response to the Tenant's testimony, SP testified that the authorization to withhold May's rent was contingent on the signing of a Mutual Agreement to End Tenancy which the Tenant never signed.

Analysis

Based on the agreement of the parties, I find that the Tenant was sufficiently served with the 10-Day Notices issued May 11th, 2023, and June 2nd, 2023.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. 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*.

The uncontested evidence of the parties is that at the time the 10-Day Notices were issued the tenant had not paid the rent that was due on May 1, 2023, or the rent that was due on June 1, 2023. Therefore, I find on a balance of probabilities that the Notices were given for a valid reason, namely, the non-payment of rent. I have reviewed the 10-Day Notices and find that the Notices comply with the form and content requirements of section 52.

I have considered the testimony and evidence of the parties and I do not accept that the Tenant was authorized to withhold rent for the month of May based on a conversation with the property manager on May 4th, 2023. Rather, I find in favour of the landlord that during the May 4th conversation, the property manager offered forgiveness of May's rent as a term of an agreement that would be contingent on the Tenant's agreement to sign a Mutual Agreement to End Tenancy which the Tenant never signed.

Furthermore, while the Tenant may have misapprehended the initial conversation, I find that the fact that the landlord did not authorize the Tenant to withhold May's rent should have been evident to the Tenant upon the issuance of the 10-Day Notice which was issued for the Tenant's failure to pay rent due on May 1st, 2023.

The Tenant has not established that they had a legal right to withhold rent and therefore, failed to comply with section 26 of the Act.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. 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.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. The uncontested evidence before me is that rent is outstanding in the amount of \$2,050.00. Therefore, the Tenant is ordered to pay \$2,050.00 in unpaid rent to the landlord.

In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the Tenant's security and pet deposit in partial satisfaction of the monetary orders.

As the Tenant was unsuccessful in their application, they are not entitled to recover the filing fee paid for their application.

Conclusion

The landlord is granted an order of possession which will be effective two days after service upon the Tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$550.00 as follows:

Item	Amount
One Month Outstanding Rent	\$2,050.00
Pet Deposit	(-\$500.00)
Security Deposit	(-\$1,000.00)
Total Monetary Order	\$550.00

The Tenant must be served with this Order as soon as possible. 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.

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: July 17, 2023