



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding GLR PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT
OPR, OPC, MNRL-S, MNDCL-S, FFL
CNC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on May 12, 2023. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) dated May 2, 2023, for an order that the Landlord comply with the *Act*, and to recover the cost of filing the application.

The Tenant’s second Application for Dispute Resolution was made on May 16, 2023. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated May 2, 2023, and to recover the cost of filing the application.

The Landlord’s Application for Dispute Resolution was made on May 31, 2023. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) dated May 2, 2023, to enforce a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated May 2, 2023, for a monetary order for unpaid rent, for a monetary order for losses, and to recover the cost of filing the application.

Two Agents for the Landlord (the “Landlord”) and the Tenant attended the conference call hearing. The Landlord and the Tenant were affirmed to be truthful in their testimony and were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The tenant confirmed that they had received the Landlord’s evidence package and also confirmed that they had not submitted an evidence package to these proceedings.

Issues to be Decided

- Should the 10-Day Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Should the One-Month Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Should the Landlord be ordered to comply with the *Act*?
- Is the Landlord entitled to a Monetary Order for unpaid rent and losses due to the tenancy?
- Is the Landlord entitled to the return of their filing fee?
- Is the Tenant entitled to the return of both their filing fees for their two applications?

Preliminary Issue – Adjournment Request

At the outset of the hearing, the Tenant requested that the hearing be adjourned due to personal issues that had caused them to be unable to prepare for these proceedings.

The Tenant testified that someone close to them had died and that this had affected their ability to prepare for this hearing and that they have struggled to secure legal counsel to represent them at these proceedings. The Tenant request that these proceedings be adjourned for two weeks from now so they may prepare their case. The Tenant confirmed that they did not submit any documentation to these proceedings to substantiate their need for an adjournment.

The Landlord objected to the adjournment, as this matter with the Tenant had been going on for some time and a further delay would be unfair to them due to the substantial amount of rent that was currently outstanding for this tenancy.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that either the applicant or the respondent or their agent may request at the hearing that it be adjourned.

Rule 7.9 (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment. Considerations for a request to adjourn include:

- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the lack of any evidence to support the Tenant's request that the possible prejudice to the landlord must outweigh all of the other considerations as a further delay in the proceeding could result in significant financial loss to the landlord. I, therefore, decline to adjourn today's hearing.

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on September 1, 2020. The parties agreed that the current rent in the amount of \$1,397.66 is to be paid by the first day of each month, and the Landlord is holding a \$675.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement and a notice of rent increase into documentary evidence.

The Landlords testified that they served the 10-Day Notice to the Tenant on May 2, 2023, by sending it to the Tenant by Canada Post Registered mail. The 10-Day Notice listed an effective date of May 17, 2023, and an outstanding rent amount of \$4,148.05. Both the Landlord and the Tenant submitted a copy of the 10-Day Notice into documentary evidence.

The Landlord testified that the Tenant had paid \$1,370.25 on June 1, 2023, and \$1,455.25 on July 1, 2023, but that the tenant had not paid the full outstanding rent as indicated on the Notice.

The Landlord requested that the Notice be enforced and that an order of possession to the rental unit and a monetary order for the outstanding rent be issued for this tenancy.

The Landlord also submitted that \$100.00 needed to be deducted from the outstanding rent for this tenancy as they had been ordered to return a filing fee to the Tenant for a previous hearing with the Residential Tenancy Branch.

The Tenant testified that they agreed that some rent is outstanding for this tenancy but that they believe that only \$995.00 is outstanding as of the date of these proceedings. The Tenant submitted that they have repeatedly asked the Landlord to prove to them what is outstanding in rent and that the Landlord has refused to respond to their request.

The Tenant was asked to present evidence of their version of their rent payments for this tenancy. The Tenant stated that they were unprepared to speak to the history of their rent payments for their tenancy. The Tenant submitted that they had made the required payments by e-transfer but that they did not have time to submit their e-transfer receipts into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(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.*

I find that the Tenant received the 10-Day notice on May 8, 2023, five days after it was sent to the Tenant by Canada Post Registered mail, pursuant to section 90 of the *Act* and that the Tenant did apply to dispute the Notice within the legislated timeline.

I accept the testimony of the Landlord supported by their documentary evidence that the Tenant had not paid the outstanding rent as indicated on the 10-Day Notice within the required five days.

I acknowledge the Tenant's testimony that they have paid most of the amount indicated on the Notice as outstanding rent, however, I find that the *Act* requires the Tenant to either pay the amount in full as indicated on the Notice or be able to show in a hearing that the amount recorded on the Notice is inaccurate. In this case, the Tenant has done neither.

Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, I accept the testimony of the Landlord supported by their documentary evidence, that the Tenant has paid \$2,825.50 towards the \$4,148.05 in outstanding rent as indicated on the Notice, and that the Tenant has not paid the rent for June and July 2023.

Again, I acknowledge the Tenant's testimony that they claim they are only \$995.00 behind in their rent, as of the date of these proceedings. However, I find that the Tenant has not provided any evidence to substantiate their version of the rent payments for this tenancy. Where the Landlord has provided a rent ledger and four bank receipts to support their claims of the missing rent payments for this tenancy.

Therefore, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for this tenancy in the amount of \$4,117.87, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

As this tenancy is ending under the 10-Day Notice, I find that there is no need to address the One-Month Notice or the Tenant's additional claim for an order for the Landlord to comply with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for their application.

As the Tenant has not been successful in their applications, I find the Tenant is not entitled to recover their filing fee for their applications.

I grant the Landlord a **Monetary Order** in the amount of **\$3,342.87**; consisting of \$4,117.87 in outstanding rent for the months of May, June, and July 2023, \$100.00 in the recovery of the Landlord's filing fee for these proceedings, less the \$675.00 security deposit the Landlord holding for this tenancy, less the \$100.00 filing fee awarded to the tenant in a previous hearing.

Conclusion

The Tenant's applications are dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$3,342.87**. 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, 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 *Residential Tenancy Act*.

Dated: July 4, 2023

Residential Tenancy Branch