



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP, OLC, FFT / OPR, MNRL-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);
- 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

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.

As both parties were represented, 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: 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 September 1, 2020.
- Rent is \$1,200.00 per month due on the first day of the month.
- A security deposit of \$600.00 and a pet damage deposit of \$600.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was signed by the Tenant and the previous owner of the rental unit, which was not entered into evidence.
- The Landlord took ownership of the rental unit in July 2022.
- The Tenant still occupies the rental unit.

The Landlord's Agent testified as follows. The Notice was issued to the Tenant on June 1, 2023 based on unpaid rent.

A copy of the Notice was entered into evidence by the Landlord. The Notice is dated June 1, 2023 and provides an effective date of June 12, 2023. The amount of outstanding rent listed on the Notice is \$8,300.00 as of June 1, 2023. The Notice was issued on June 1, 2023 via registered mail.

I was referred to a record of accounts submitted into evidence by the Landlord. The Landlord's Agent confirmed that as of December 1, 2022 the Tenant had rental arrears of \$1,100.00 and no payments were made following that date. Since the Notice was issued, the Tenant has continued to withhold rent and, as of July 1, 2023, the total rent arrears stand at \$9,500.00.

The Landlord seeks an Order of Possession and a Monetary Order for unpaid rent.

The Tenant testified as follows. They received two 10 Day Notices to End Tenancy for Unpaid Rent, one dated May 10, 2023 and one dated June 1, 2023.

The Tenant did not dispute that they withheld rent as put forward by the Landlord's Agent and stated there were issues with the rental unit such as the power going out as well as repairs required to the bathroom and decking. The Landlord never provided an address for service when they took ownership of the rental unit in July 2022, only an email address to send e-transfers for rent to.

The Tenant had dealt with the Landlord via their realtor who was initially responsive regarding the repair issues. The realtor had sent workers from Vancouver up to Prince George to carry out the repairs, but the decking was finished poorly and within a short amount of time, the finishing on the shower in the bathroom began to peel. Also, the new pipes in the bathroom have been put through cupboards. The Tenant was without use of the shower for around one and a half weeks and the overall bathroom repairs took five weeks to complete.

The issues with the bathroom began in November 2022. The Tenant stated they withheld rent to get the attention of the Landlord regarding the repairs after the Landlord's relator stopped responding to their messages. They asked the realtor for the Landlord's address, and they said they had already provided it to the Tenant.

The Tenant confirmed they had not incurred any expenses themselves regarding any of the repairs to the rental unit.

In response to the Tenant's testimony, the Landlord's Agent stated that the repairs at the rental unit had been completed and acknowledged the comments made by the Tenant about the quality of the work, which the Landlord will pursue under the warranty with the tradespeople.

Analysis

Section 26 of the Act requires tenants to pay rent on time, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement, 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 withheld rent as there were issues relating to repairs carried out at the rental unit, specifically the quality of the repairs and the time taken to complete the work.

The Tenant stated they were unable to contact the Landlord or start their Application until they were served the first 10 Day Notice to End Tenancy which provided the Landlord's address for service. However, I note the Tenant did not request and order to reduce rent for repairs not carried out in their Application. I also note that per the rental account submitted into evidence by the Landlord, which the Tenant did not take issue with, rent had been partially withheld by the Tenant before the repairs were required.

Given this, I find that the Tenant was obligated to pay rent in full and they had no valid reason under the Act to deduct any amount from 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.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent in full from January 1, 2023 to July 1, 2023 inclusive. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

I accept the Landlord's Agent's undisputed testimony that 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 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 and the Landlord's Application is granted.

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, 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 \$9,500.00 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 and pet damage deposit for a total of \$1,200.00 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 in accordance with section 72 of the Act.

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

Conclusion

The Application is granted.

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	\$9,500.00
Filing fee	\$100.00
Less: security deposit and pet damage deposit	(\$1,200.00)
Total	\$8,400.00

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: July 07, 2023

Residential Tenancy Branch