



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding METROPOLE HOTEL APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, LRE, LAT, OLC
OPR-DR, FFL

Introduction

This hearing concerned the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, issued June 7, 2023. The Tenant's application also requested compensation from the Landlord for monetary loss; to suspend or limit the Landlord's right of entry to the rental unit; authorization to change the locks to the rental unit; and, a request that the Landlord comply with the Act, regulations and/or tenancy agreement.

The hearing also dealt with the Landlord's cross-application for an Order of Possession based on the 10 Day Notice issued June 7, 2023 under sections 46 and 55 of the Act, a Monetary Award for Unpaid Rent under section 67 of the Act, and reimbursement of the filing fee.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to an order for compensation from the Landlord for monetary loss?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to authorization to change the locks to the rental unit?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

Evidence was provided showing that this tenancy began on April 1, 2023, with a monthly rent of \$1,190.00, due on the first day of the month. At the start of the tenancy, the Landlord collected a security deposit in the amount of \$595.00 and a Fob key access deposit in the amount of \$50.00, and these funds continue to be held in trust.

The Landlord's agent testified that the Tenant's June 2023 rent payment had been dishonored by the bank and the Landlord had also incurred a \$40.00 NSF fee as a result. On June 7, 2023, the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent in the amount of \$1,190.00 plus the \$40.00 NSF fee. The Notice provided that the Tenant was personally served that same date and a copy was also posted to the door of the rental unit. A copy of the Notice was submitted into evidence.

The Landlord's agent also testified that the Tenant's July 2023 rent payment had also been dishonored by the bank, resulting in unpaid monthly rent of \$1,190.00 and an NSF fee of \$40.00. On July 20, 2023, the Landlord issued another 10 Day Notice for Unpaid Rent with an effective date of July 29, 2023. The Landlord served the Tenant personally with this Notice and also posted a copy on the door of the rental unit the same date the Notice was issued. A copy of this Notice was also submitted into evidence.

The Landlord's agent testified that as of the date of the hearing, the Tenant's August 2023 rent payment had also been dishonored by the bank, resulting in additional unpaid rent of \$1,190.00 and a \$40.00 NSF fee.

The Tenant testified he remains in possession of the rental unit. The Tenant did not dispute that he had not paid rent for June, July and August 2023. The Tenant testified that he did not pay June 2023 rent as the Landlord's maintenance man had allowed entry to his rental unit to an individual whom the Tenant alleges stole personal property valued at approximately \$1,500.00. The Tenant provided an undated screenshot of a text confirming the submission of a theft report with the local police. The Landlord's agent admitted that building maintenance had allowed the individual access to the Tenant's rental unit on the erroneous assumption that the individual was known to the Tenant. However, the Landlord's agent stated that the Tenant did not provide confirmation of the items allegedly taken or evidence to establish the value of the personal property. The Tenant did not submitted any evidence to establish the value of the allegedly stolen personal property from his rental unit.

The Tenant also testified that he did not pay for July or August 2023 rent as his unit had no power since early July 2023. The Tenant stated he was forced to eat out for his meals, could not run a cooling fan, and was forced to buy a considerable number of candles for lighting purposes. The Landlord's agent admitted that rental unit lost connectivity to power in approximately the first week of July 2023 and power was

restored on or about August 11, 2023. The Landlord's agent testified that he investigated the power outage to the unit with the utility company and it was determined that the problem was due to the utility company's upgrades and work in the area. The Landlord testified that the approximate value of electricity to the unit (included as part of monthly rent) was \$40.00.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice issued June 7, 2023 was personally served to the Tenant on June 7, 2023, and that the Tenant had until June 17, 2023, to dispute the 10 Day Notice or to pay the full amount of unpaid rent. I find that the Landlord's Notice issued June 7, 2023 complies with section 52 of the Act. The Tenant applied for dispute resolution on June 12, 2023.

I further find that the 10 Day Noticed issued July 20, 2023 was personally served to the Tenant on that same day for unpaid rent. I find that the Landlord's Notice issued July 20, 2023 complies with section 52 of the Act. The incorrect effective date of July 29, 2023 is deemed corrected under section 53(1) of the Act.

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

I accept the parties' testimony that the Tenant has not paid rent for June, July and August, 2023 and that the Tenant remains in possession of the unit. The Landlord stated the total unpaid rent was \$3,690.00 including the NSF fees.

Section 26 of the Act requires that rent be paid when due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 67 provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Policy Guideline 16 provides that the party claiming the loss or damage bears the burden of proof.

The Tenant has not established the value of the personal property allegedly stolen when the Landlord provided unauthorized access to the rental unit.

There is no dispute between the parties that the rental unit lacked electricity from early July 2023 to approximately mid-August 2023. However, by that time the Tenant was no longer entitled to remain in the rental unit as the effective date of the first Notice was June 17, 2023. Therefore, I find that the Tenant has not established that he was not entitled to pay rent while remaining in the unit after that date due to lack of electricity to the rental unit.

I further find that the Landlord is entitled to an order of possession in addition to a monetary order for unpaid rent.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Remainder of Tenant's Application

As the tenancy has ended for the Tenant's failure to pay rent, I find the Tenant's remaining issues moot. I make no findings regarding these matters. For this reason, the remainder of the Tenant's application is dismissed, without leave to reapply.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

I find that the Landlord was the successful party in this matter and I grant the Landlord reimbursement from the Tenant for the application fee. I grant the Landlord a Monetary Order in the amount of **\$3,140.28** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 46	\$3,690.00
Interest on the initial security deposit	(\$4.72)
Less amount Tenant's security deposit	(\$645.00)

Reimbursement of filing fee	\$100.00
Total Amount	\$3,140.28

The Landlord is provided with this Order on 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.

I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 16, 2023

Residential Tenancy Branch