



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: 910121455: CNR, CNL-MT, CNOP, CNMN, OLC
911012925: OPR-DR, OPL, MNR-DR, MNDCL-S, LRSD, FFL

Introduction:

This hearing involved two cross applications concerning the Rental Unit. The Landlord has served two Notices upon the Tenant, one being a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and another Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice").

In response to the 10 Day Notice and Two Month Notice, the Tenant filed for dispute resolution to cancel these notices. The Landlord has also filed direct requests for an order for possession, a monetary award and for the recovery of the required filing fee.

Issue(s) to be Decided

1. **Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**
2. **Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession.**
3. **Is the Landlord entitled to a Monetary Order for unpaid rent?**
4. **Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

Background and Evidence

The parties appeared before me on cross applications concerning the 10 Day Notice and Two Month Notice. The Tenant is seeking to cancel both notices plus additional relief, and the Landlord is seeking direct requests for occupancy and a monetary award for unpaid rent and recovery of the filing fee.

I will only refer to the evidence presented at the hearing as it is relevant to my determination of the issue before me,

Tenant F.Q. appeared for the Tenant. Tenant F.S. did not attend the hearing or participate. It would have been useful if Tenant F.S. had attended and given evidence.

The evidence of the Landlord was largely uncontested as Tenant F.Q. did not have direct interactions with the agent for the Landlord R.C.Z. The Tenant F.Q. no longer resides in the Rental Unit, testifying he checks in from time to time with F.S. and his children.

The parties entered into a Tenancy Agreement by way of assignment of lease effective July 18th, 2019 for \$1353.03 monthly. The agent for the Landlord R.C.Z. collected the rent payments in cash.

R.C.Z. testified he personally served Tenant F.S. with the Two Month Notice and the 10 Day Notice and explained the effect of the Notices to F.S.

R.C.Z. also testified that when he attempted to collect the rent for the month of August, F.S. called F.Q. as to whether to pay the rent. The rent was not paid. I accept this evidence.

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. The Landlord has acknowledged receipt of the 10-day Notice as required by the Act.

In considering the Tenant's request to set aside the Notice, I must apply section 26 (1) of the Act which requires that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with Act...". Unless there has been a prior order of an Arbitrator allowing a tenant to withhold paying all or a portion of the rent, rent "must" be paid.

The Tenant could not provide evidence of an entitlement to withhold rent and confirmed rent was outstanding as of the date of the 10 Day Notice. The Tenant stated that R.C.Z. on behalf of the Landlord would not provide a receipt. R.C.Z. stated he attempted to collect the rent from the Tenant F.S., who, as a result a conversation with F.G., refused to pay the rent. I find this withholding of the rent was in response to the Two-Month Notice previously filed and served by the Landlord.

Should the 10 Day Notice be Set-Aside?

The evidence of Tenant confirmed the non-payment of rent contrary to the Tenancy Agreement. As a result I must dismiss the application of the Tenant to set aside the Notice.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 55(1) of the Act states that if a Tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession effective October 1, 2023.

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession.

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenants dispute that the Notice is being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the Tenant may substantiate that claim with evidence.

The Tenant F.Q. stated this it was rumoured that the Landlord owned multiple properties and that he believed that the Landlord had other places to live. The Tenant was unable to offer evidence to substantiate this rumour.

The Landlord B.D. gave evidence that she owned no other properties and that she was currently renting alternate accommodations pending gaining occupancy of the Rental Unit.

I accept the evidence of the Landlord as establishing a good faith intention to occupy the Rental Unit for her own personal use and for no other improper purpose or ulterior motive. I note the remedies available to the Tenant under the Act should this not be the case.

As a result, I find the Landlord is entitled to an Order of Possession effective October 1, 2023.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Section 7 of the Act also provides me with the authority to make a monetary award in favor of the Landlord to compensate for loss resulting from the Tenant's failure to comply with the Tenancy Agreement and Act.

I find that the outstanding amount owed by the Tenant to the Landlord totals \$2706.06.

Under s. 72 (2) of the Act, I may order that the amount of the security deposits held by the landlord be retained by the landlord to satisfy a monetary order made against a tenant. I therefore order that the security deposit plus interest to September 30th totaling \$646.82 be retained by the Landlord.

Under s. 7 and s.55(1.1) I find that the Landlord is entitled to a Monetary Order for the balance of the unpaid rent and occupancy in the amount of \$2059.24.

I deny the Landlord's request for two months alternate accommodations as the tenancy remains in effect subject to a determination of the issues before me in this dispute resolution hearing, and the Landlord retains the benefit of the lease payments until the conclusion of the tenancy.

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

No, the Tenant was unable to present evidence to support this Application.

Is the Landlord entitled to recover the filing fee for their application from the Tenant?

Yes, the Application of the Landlord was successful, so the Landlord is entitled to recover the filing fee from the Tenant in the amount of \$100.00.

Relief Granted:

I grant an Order of Possession to the Landlord **effective on October 1, 2023, after service of this Order on the Tenant(s)**. Should the Tenant(s) or anyone 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.

I grant the Landlord a Monetary Order in the amount of **\$2159.24** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under section 7 and 55(1.1) of the Act.	\$2059.24
Filing Fee	\$100
Total Amount	\$2159.24

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 dismiss all other claims and crossclaims filed by the Landlord and Tenant without leave to reapply.

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: September 13, 2023

Residential Tenancy Branch