



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNC, LRE, FFT
a. Tenant: CNR, CNC, CNL, CNL-4M, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On August 27, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute a One-Month Notice to End Tenancy for Cause (the "One-Month Notice");
- b. for suspended/set conditions on the Landlord's right to enter the rental unit;
- c. for reimbursement of the Application filing fee.

On September 13, 2023, the Tenant submitted a second Application:

- d. to dispute One-Month Notice
- e. to dispute a 10-Day Notice to End Tenancy Issued for Unpaid Rent (the "10-Day Notice")
- f. to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- g. to dispute a Four-Month Notice to End Tenancy for Demolition, or Conversion to Another Use
- h. for reimbursement of this Application filing fee.

On September 19, 2023, the Landlord submitted an Application:

- i. for an order of possession associated with the 10-Day Notice
- j. for recovery of rent amounts the Tenant did not pay

- k. for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 30, 2023.

The Landlord attended the scheduled hearing; the Tenant did not attend.

Preliminary Matter – Tenant’s Applications

The Landlord who attended the hearing stated they did not receive notice of either of the Tenant’s Applications. The Tenant did not submit evidence that they served the Notice of Dispute Resolution to the Landlord, and did not attend the hearing to speak to the matter of service.

The Act s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for their application to a respondent. I find the Tenant did not serve the Notice of Dispute Resolution Proceeding for their August 27 Application, nor their September 13 Application. The Act s. 89 gives the rules of service for an application for dispute resolution. Basically, this is by leaving a copy with the person or their agent or sending a copy via registered mail. The *Residential Tenancy Branch Rules of Procedure* give specific information on a party serving their evidence to the other party.

For this reason, I dismiss the Tenant’s August 27 Application in its entirety, without leave to reapply. I similarly dismiss the Tenant’s September 13 Application in its entirety, without leave to reapply. The remaining issues from the Landlord’s Application are listed below.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the Act?

Is the Landlord entitled to compensation for the rent not paid by the Tenant?

Is the Landlord entitled to reimbursement for the Application fee for their Application, pursuant to s. 72 of the Act?

Background and Evidence

The Landlord provided a copy of the original tenancy agreement they had with the Tenant. The parties signed the document on April 23, 2015 for the tenancy started on April 1, 2015. The rent amount was \$1,100 as at the start of the tenancy, payable on the 1st day of each month. There is a \$25 parking fee for each month. The agreement shows that the Tenant paid a deposit of \$550.

The agreement also provides for a service charge of \$25 when rent is late. Also, NSF (non-sufficient funds) or returned cheques are subject to a \$25 late charge.

In the evidence, the Landlord presented notices of rent increase. They used the specific form from the Residential Tenancy Branch for that purpose each time. The Landlord issued the most recent increase on February 8, 2022, increasing the rent from \$1,248 to \$1,266, effective June 1, 2022.

The Landlord signed and served the 10-Day Notice on September 7, 2023. This provided the end-of-tenancy date of September 17, 2023.

On page 2, the Landlord indicated that the Tenant did not pay rent of \$1,266 that was due on September 1, 2023. They added the fees combined amount of \$50.

In the hearing, the Landlord provided that the Tenant did not pay rent for October 2023 and November 2023. This makes a combined total of three months' rent not paid, including parking for each month, as well as the fees associated with non-payment for each month.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a 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. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid “on any day after it is due”, with an end-of-tenancy date that is “not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice on September 7, 2023. The Tenant did not complete rent payments within 5 days of being served the Notice of Dispute Resolution Proceeding. Otherwise, I have dismissed the Tenant’s Application for their non-attendance in the hearing.

I conclude the Tenant did not pay the full rent amount as required. I find the tenancy agreement was explicit on the full amount of rent payable by the Tenant each month. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent. Nor did they have any authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

Under s. 55 of the *Act*, when the Tenant’s Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount, accumulated from September to November 2023 is \$3,798. I find that fees charged by the Landlord do not qualify as rent, nor does the parking fee the Landlord charged or each month. The Landlord must apply for recovery of those amounts separately. The *Act* s. 55(1.1.) specifies only a recovery of unpaid rent.

I grant an amendment to the Landlord’s Application for additional months not paid since they made their Application in September, as set out in Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$3,798. After setting off the \$550 security deposit, there is a balance of \$3,248. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$3,248 as compensation for the rent amounts owing, as plainly presented by the Landlord in this hearing.

The Landlord was successful on their Application; therefore, I grant reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss each of the Tenant's Applications, without leave to reapply.

I grant an Order of Possession to the Landlord, **effective TWO DAYS after they serve it to the Tenant**. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay to the Landlord the amount of \$3,348 which includes \$3,248 for rent amounts owing, and the \$100 filing fee. I grant the Landlord a Monetary Order for this amount. The Landlord may, if necessary, file this Monetary Order with the Provincial Court (Small Claims), where it will be enforced as an order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 30, 2023

Residential Tenancy Branch