



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding JSN INDUSTRIES HOLDINGS LTD. C/O TRIBE
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

File *****151: CNC-MT, OLC, FFT

File *****389: CNR-MT, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear the applications regarding the above-noted tenancy.

The Tenant's application file number *****151 pursuant to the Act is for:

- cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The Tenant's application file number *****389 pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

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.

Tenant MM (the Tenant) and the respondent's agents VN and DG attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issues

File number *****151 states the landlord respondent is "Triple/Phone number....".

File number *****389 states the landlord respondent is Tribe Management.

Both parties agreed the landlord is JSN Industries Holdings Ltd. C/O Tribe Management and the rental unit address is the address listed on the cover page of this decision.

VN and DG stated they are agents representing Tribe Management and JSN Industries Holdings Ltd.

Pursuant to section 64(3)(a) of the Act, I have amended the applications to list the respondent landlord JSN Industries Holdings Ltd. C/O Tribe Management and the rental unit's address.

Hereinafter I will refer to VN as the Landlord.

Service

The Landlord confirmed receipt of the notices of hearing and evidence (the materials) and that he had enough time to review them.

Based on the Landlord's undisputed testimony, I find the Tenant served the materials in accordance with section 89(1) of the Act.

The Landlord testified he registered mailed the response evidence on December 7, 2023 to the rental unit's address.

The Tenant said he did not receive the response evidence.

The hearing was on December 18, 2023.

Rule of Procedure 3.15 states the response evidence must be served "not less than seven days before the hearing".

Section 90(a) of the Act states that a package registered mailed is deemed served 5 days after it was mailed.

Per Rule of Procedure 3.15 and section 90(a) of the Act, I excluded the Landlord's response evidence, as the Landlord registered mailed it on December 7, 2023, this package is deemed served on December 12, and the hearing was on December 18, less than seven days after the date the Tenant is deemed served the response evidence.

Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day Notice and the One Month Notice and the continuation of this tenancy are not sufficiently related to any of the Tenant's other claims to warrant that they be heard together.

The Tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notices to end tenancy. I exercise my discretion to dismiss all of the Tenant's claims with leave to reapply except cancellation of the 10 day Notice and One Month Notice which will be decided upon.

Issues to be Decided

Is the Tenant entitled to:

1. Cancellation of the One Month and 10 Day Notices?
2. An authorization to recover the filing fees?

If the applications are dismissed, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notices.

Both parties agreed monthly rent in the amount of \$1,200.00 is due on the first day of the month and that the Landlord collected and holds in trust a security deposit (the Deposit) of \$587.50. The Tenant submitted the tenancy agreement into evidence. It states the tenants are the Tenant and HC.

The Tenant affirmed that HC moved out in 2022 and that he authorized AC to move to the rental unit in July 2023. The Tenant stated the Landlord's agent verbally authorized the Tenant to authorize AC to move to the rental unit.

The Tenant testified that he asked AC to move out on September 6, 2023, but AC refused to do so. The Tenant moved out on September 6, 2023 and did not give the keys to the Landlord, as AC was still living in the rental unit.

The Landlord said he did not authorize AC to occupy the rental unit and that he learned the Tenant moved out on November 27, 2023.

The Tenant confirmed receipt of the One Month Notice on September 26, 2023 and submitted the application file number *****151 on September 11, 2023.

The Tenant submitted the One Month Notice into evidence. It is dated September 6, 2023 and it is not signed. The effective date is October 9, 2023.

The Tenant confirmed receipt of the 10 Day Notice on November 24, 2023 and submitted the application file number *****389 on November 21.

The Landlord affirmed he attached the 10 Day Notice to the rental unit's front door on November 22, 2023.

The Tenant submitted the 10 Day Notice into evidence. It is dated November 22, 2023 and the effective date is December 6. It states the Tenant failed to pay rent in the amount of \$1,337.17 due on November 1, 2023. The Landlord stated the Tenant had a balance of \$137.17 from a prior month.

The Tenant testified he did not pay November 2023 rent because he was unemployed. The Tenant said the last time he paid rent was on October 1, 2023.

The Landlord is seeking an order of possession, as AC continues to occupy the rental unit and a monetary order only for November 2023 rent in the amount of \$1,200.00.

The Tenant authorized the Landlord to serve documents via email. The Tenant's email address is recorded on the cover page of this decision.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the reasons for the notices to end tenancy is on the Landlord, per Rule of Procedure 6.6.

Ongoing Tenancy

I accept the uncontested testimony that the Tenant authorized AC to move to the unit in July 2023 and that the Tenant moved out on September 6, 2023 and AC continues to occupy the rental unit.

I find the Tenant failed to prove his defence argument that the Landlord authorized AC to move to the rental unit. The Tenant did not submit documents and did not call witnesses to prove that the Landlord authorized AC to move to the unit and the Landlord denied this fact.

Section 44(1)(d) of the Act states that a tenancy ends if the tenant "vacates or abandons the rental unit".

Policy Guideline 13 states: "The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted onto the property by the tenant."

I find the Tenant has not vacated or abandoned the rental unit, as the Tenant authorized AC to occupy the rental unit, did not return the keys to the Landlord and AC has been occupying the rental unit. Thus, I find the tenancy did not end.

One Month Notice

I accept the uncontested testimony the Tenant received the One Month Notice on September 26, 2023.

Per section 47(4) of the Act, a tenant may dispute a one month notice to end tenancy in 10 days.

I find the Tenant disputed the One Month Notice within the timeframe of section 47(4), as the Tenant received the Notice on September 26, 2023 and disputed it on September 11.

Section 52 states that a notice to end tenancy must be signed by the landlord.

The One Month Notice is not signed.

Accordingly, I cancel the One Month Notice.

Ten Day Notice

I accept the uncontested testimony the Tenant received the 10 Day Notice on November 24, 2023.

Per section 46(4) of the Act, a tenant may dispute a 10 day notice to end tenancy in 5 days.

I find the Tenant disputed the Notice within the timeframe of section 46(4), as the Tenant received the 10 Day Notice on November 24, 2023 and disputed it prior to the deadline.

Section 46(4) and (5) of the Act states:

- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I accept the uncontested testimony the Tenant did not pay rent due on November and December 1, 2023.

I dismiss the application to cancel the 10 Day Notice, as the Tenant has not paid the rent due on November 1, 2023.

I find the form and content of the 10 Day Notice complies with section 52 of the Act, as it is signed by the Landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Based on the above, I find the tenancy ended on December 6, 2023, per section 44(1)(a)(ii) of the Act.

I award the Landlord an order of possession, per section 55(1) of the Act.

Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:

However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

Considering that AC has been occupying the rental unit, I find it reasonable to extend the effective date of the order of possession to ten calendar days after service.

I warn the Tenant that he may be liable for any costs the Landlord incurs to enforce the order of possession and that the Tenant must pay rent until the day he moves out.

Unpaid rent

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the undisputed testimony and the 10 Day Notice, I find the Tenant did not pay November 2023 rent in accordance with section 26(1) of the Act.

Per sections 26(1) and 55(1.1) of the Act, I award the Landlord the unpaid rent of November 2023 in the amount of \$1,200.00.

Filing Fees and Deposit

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the Landlord to retain the \$587.50 Deposit in partial satisfaction of the monetary award.

In summary, I award the Landlord:

Item	Amount \$
Unpaid rent November 2022	1,200.00
Deposit (minus)	587.50
Total:	612.50

Per section 72 of the Act, I authorize the Tenant to recover the \$100.00 filing fee for application *****151, as the Tenant was successful in that application.

The Tenant must bear the cost of the filing fee for application *****389, as the Tenant was not successful in that application.

Thus, I award the Tenant \$100.00.

Policy Guideline 17 states: “the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.”

As such, I award the Landlord \$512.50.

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the Landlord effective ten calendar days after service of this order on the Tenant. 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.

Per sections 26, 55(1.1) and 72 of the Act, I authorize the Landlord to retain the \$587.50 Deposit and award the Landlord \$512.50. The Landlord is provided with this order in the above terms and the Tenant must be served with this order. 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 *Act*.

Dated: December 20, 2023

Residential Tenancy Branch