



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910125867: CNR, CNL, MNDCT, DRI, OLC

File #910132816: OPU-DR, MNU-DR, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”) by way of application and amendment:

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed on November 7, 2023 (the “November 7th 10 Day Notice”);
- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on August 31, 2023;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 43 disputing a rent increase; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlords file their own application and amendment seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on October 2, 2023 (the “October 10 Day Notice”) and November 2, 2023 (the “November 2nd 10 Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

K.K. attended as the Tenant. R.V. and A.V. attended as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Tenant's Application Materials

The Tenant advised having served the Landlords with her application, amendment, and evidence. The Landlords acknowledge receipt of the same without objection. Based on this, I find that pursuant to s. 71(2) of the *Act* that the Tenant's application materials were sufficiently served on the Landlords.

Service of the Landlords' Application Materials

The Landlords advise that they posted their application and initial evidence to the Tenant's door on November 2, 2023. The Landlords further advise that they served additional response evidence to the Tenant by posting it to the Tenants door on November 21, 2023.

The Tenant denies receipt of either package, though confirms she was otherwise residing in the rental unit at that time.

The Landlords have provided two RTB-55 proof of service forms, signed November 2, 2023 and November 21, 2023. I am also provided with photographs of an envelope taped to the door of the rental unit. The Landlords confirmed that the envelope contained their application and evidence. Another photograph provided to me shows a 10 Day Notice posted next to copies of a Notice of Dispute Resolution.

In the process of confirming service of the other documents, the Landlords advised that the November 2nd 10 Day Notice was posted to the door on November 2, 2023. The Tenant acknowledges receipt of that notice on November 2, 2023.

The photograph provided by the Landlords shows their Notice of Dispute Resolution was posted next to a notice to end tenancy. I accept that that notice to end tenancy was the November 2nd 10 Day Notice. The Tenant acknowledged receiving that notice to end tenancy but denies receiving the Notice of Dispute Resolution posted adjacent to the notice on the door. In the face of the proof of service provided, I find that the Tenant denying receipt of the Landlords' Notice of Dispute Resolution to lack credibility.

I find that the Landlords' Notice of Dispute Resolution was served in accordance with s. 89(2) of the *Act* on November 2, 2023. That document is clearly visibly in the photograph provided by the Landlord. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlords' application on November 5, 2023.

Having made this finding on service of the application, I also found the Landlords to be disorganized in confirming service of their application materials. I note that the picture of the envelope, the one posted to the door, was provided to the Residential Tenancy Branch on November 21, 2023 as proof of service of documents served on November 21, 2023. Despite this, the Landlords testified that the envelope contained their application and was served on November 2nd. Further, the photograph which does show the Notice of Dispute Resolution, does not appear to show any evidence included with the documents posted to the door.

Rule 3.14 of the Rules of Procedure requires that Landlords', as applicants, to serve their evidence such that it is received by the Tenant at least 14 days prior to the hearing. I further note that the Landlords are respondents as well, such that the 7-day deadline for service of evidence imposed by Rule 3.15 of the Rules of Procedure could arguably apply.

Based on the submissions and proof of service provided to me by the Landlords, it is unclear what evidence was served by them and when. I accept an envelope was posted to the Tenant's door on November 21, 2023, though the contents of that envelope are unknown to me. Again, the Tenant denied receipt of the Landlords' evidence.

If evidence was posted to the door on November 21st, I cannot determine which documents provided to me by the Landlords were included and whether it can properly be characterized as response evidence or not. Further, it does not appear that any evidence was posted to the door on November 2, 2023.

In the face of this uncertainty, I find that the Landlords have failed to demonstrate service of their evidence either in compliance with Rule 3.14 or 3.15 of the Rules of Procedure. As the Landlords have failed to demonstrate service of their evidence, I find that it would be procedurally unfair to review or consider it. I hereby exclude the Landlords' evidence in its entirety.

Finally, with respect to the Landlords' amendment, rules 4.3 and 4.6 of the Rules of Procedure require amendments be served such that they are received at least 14 days prior to the hearing. I note that the amendment provided to me is signed on November 9, 2023, such that it could not have been served on November 2, 2023 and that if it was posted to the door on November 21, 2023, it would have been served late.

I find that the Landlords' amendment was not served in time such that it to consider it would be procedurally unfair. As such, I do not permit the Landlords' written amendment of November 9, 2023.

Preliminary Issue – Tenant's Claims

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

The Tenant seeks wide ranging relief in her application. I note that the primary issue in dispute is whether the tenancy will end or continue based on the notices to end tenancy. Indeed, the Tenant's claim under s. 62 of the *Act* that the Landlords comply would only be relevant if the tenancy continues.

I find that the Tenant's following claims are not sufficiently related to the issues raised by either the Two Month Notice or the 10 Day Notices:

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

Both of these claims are dismissed. In the case of the claim for compensation, it is dismissed with leave to reapply. In the case of the claim under s. 62 of the *Act*, should the tenancy continue or not will determine whether it is dismissed with or without leave to reapply.

The hearing proceeded strictly on the question of the enforceability of the notices to end tenancy and the question of unpaid rent.

Preliminary Issue – Tenant’s Claim to Dispute a Rent Increase

I did not sever the Tenant’s claim to dispute a rent increase on the basis that payment of a rent increase imposed contrary to the *Act* may constitute grounds for withholding rent payment under s. 43(5) of the *Act*.

During submissions, I asked the Tenant why she was seeking to dispute a rent increase. The Tenant said she was not disputing a rent increase.

I note that in her application she did dispute a rent increase of \$200.00 and that she had “paid more as asked by the Landlord against the compliance with the *Act*”. I further note that at the outset of the hearing, the Tenant says the Landlords sought a \$200.00 increase in rent in July 2023. The landlord R.V. says that that was discussed but it had not been finalized.

Both parties confirmed total rent owed on the first of each month was \$5,100.00.

It is unclear to me why the Tenant filed to dispute a rent increase only to immediately abandon the claim when asked to provide submissions. Based on what I had been told previously, I accept that there was some discussion of a rent increase of \$200.00, which was neither agreed to nor imposed.

Given this, I find that the Tenant’s claim to dispute a rent increase was improperly pled and, in any event, the Tenant has failed to show any rent increase was imposed. As such, this claim is dismissed without leave to reapply.

Issues to be Decided

- 1) Are any of the 10 Day Notices before me enforceable?
- 2) Is the Two Month Notice enforceable?
- 3) Are the Landlords entitled to an order for unpaid rent?
- 4) Are the Landlords entitled to the return of their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm that rent of \$5,100.00 is due on the first of each month.

The Landlords advise that the residential property comprises of 3 rental units and that the Tenant has taken on all three of the rental units in separate tenancy agreements.

1) Are any of the 10 Day Notices before me enforceable?

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

When a tenant fails to either pay the overdue rent or file an application disputing the notice to end tenancy within the 5-day deadline imposed under s. 46(4) of the *Act*, they are conclusively presumed to have accepted the end of the tenancy as per s. 46(5) of the *Act* and must vacate the rental unit by the effective date of the notice.

The October 10 Day Notice

The Landlords advise that the October 10 Day Notice was posted to the Tenant's door on October 2, 2023. The Tenant acknowledges receiving the October 10 Day Notice on the same date. I find that the October 10 Day Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on October 2, 2023 as acknowledged by her at the hearing.

I am provided with a copy of the October 10 Day Notice by the Tenant.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the October 10 Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective

date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The Landlords testified that the Tenant failed to pay rent on October 1, 2023 and otherwise failed to pay rent on November 1, 2023 or December 1, 2023. The Tenant confirmed this saying she was advised by the Residential Tenancy Branch that she did not need to pay rent after having filed her application.

I note that the Tenant filed her original application on September 7, 2023. The original application, having been filed on September 7, 2023, obviously did not dispute the October 10 Day Notice. I further note that the Tenant's amendment was signed on November 15, 2023 and only disputed the November 7th 10 Day Notice.

I find that the Tenant failed to pay rent on October 1, 2023. I further find that the Tenant, after having received the October 10 Day Notice, did not pay the overdue amount within 5 days, and did not file to dispute the notice either. The application was filed before the October 10 Day Notice was served and amendment was signed well after effective date of the notice.

Given this, I find that the conclusive presumption under s. 46(5) of the *Act* has been triggered. The Landlords are entitled to an order of possession under s. 55 of the *Act* pursuant to the October 10 Day Notice.

I have considered procedural issues that may have arisen in this matter given the number of notices to end tenancy served. I note that I may amend an application at the hearing but only in circumstances that can be reasonably anticipated, such as when rent owed increases due to the passage of time, or when the parties' consent to the amendment.

I did not amend the Tenant's application to include the claim disputing the October 10 Day Notice because it is not a reasonably foreseeable claim based on her original application. I further question my ability to do so considering the restrictions imposed by s. 66(2) and 66(3) of the *Act* as the effective date of the October 10 Day Notice was October 12, 2023.

Finally, even if the Tenant had filed to dispute the October 10 Day Notice at all or on time, it would not have changed the outcome. The Tenant admits she did not pay rent on October 1, 2023. The parties confirm total rent owed was \$5,100.00 on the first.

The Tenant believed that she was permitted to withhold rent pending the outcome of this matter. That belief was entirely misplaced. I note that the *Act* does not permit a tenant to withhold rent pending the outcome of a hearing and, indeed, the obligation to pay rent established by s. 26(1) of the *Act* is clear.

I have also considered the application of s. 51(1.1) of the *Act*, which permits a tenant who receives a notice to end tenancy under s. 49 of the *Act* to withhold payment of their last month's rent. I find that that section does not apply to October's rent since the effect of seeking to cancel the Two Month Notice suspended its enforceability pending hearing. In other words, the Tenant was obliged to continue to pay rent until the hearing was held on the Two Month Notice.

I grant the Landlord an order of possession under s. 55 of the *Act* pursuant to the October 10 Day Notice. As rent has not been paid for three months and the effective date of the October 10 Day Notice has long since passed, I make the order of possession effective 2 days after it is received by the Tenant.

As the tenancy was conclusively over as of October 12, 2023, I make no findings with respect to the enforceability of the subsequent notices to end tenancy for unpaid rent or utilities.

2) Is the Two Month Notice enforceable?

Given that the tenancy ended pursuant to the October 10 Day Notice and the conclusive presumption under s. 46(5) of the *Act*, I find that determining whether the Two Month Notice was issued in good faith is moot.

Further, the Landlords provided submissions in which they state they intend to move into the rental unit to enable them easier access to a nearby property they are building. In other words, the Landlords did not withdraw the Two Month Notice, nor did they say it was improperly issued.

I make no findings cancelling the Two Month Notice, nor do I make any orders setting it aside. It is, in my view, a proper notice given that the tenancy ended pursuant to the October 10 Day Notice before the Tenant's application to cancel the Two Month Notice was heard.

3) Are the Landlords entitled to an order for unpaid rent?

The Landlords claim unpaid rent on their application and unpaid utilities.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Given the passage of time, I permit the Landlords to seek additional compensation for November and December 2023 as permitted by Rule 4.2 of the Rules of Procedure.

It is undisputed that the Tenant failed to pay rent for October, November, and December 2023. I am advised by the Tenant and accept that she continues to reside within the rental unit.

As noted above, the Tenant had no authorization to do withhold rent. I find that the Tenant breached her obligation to pay rent as per the tenancy agreements and s. 26(1) of the *Act*.

As alluded to above, under s. 51(1) of the *Act*, a tenant who receives a notice to end tenancy issued under s. 49 is entitled to compensation equivalent to one month's rent. As the Two Month Notice was issued under s. 49 of the *Act* and as it was not set aside, I find that the Tenant is entitled to one month's rent in compensation under s. 51(1) of the *Act*.

Accordingly, I grant the Landlords a monetary order in the amount of \$10,200.00 (\$5,100.00 x 2), which comprises unpaid rent and lost rental income for when the Tenant was overholding, less one month's rent in compensation the Tenant is entitled to under s. 51(1) of the *Act*.

The Landlords also seek \$336.00 in unpaid utilities. The Landlords testify that the Tenant is responsible for paying utilities as per her tenancy agreements and that she failed to pay \$336.00 from the utilities owed from August 2023. The Tenant disputes she is responsible for paying utilities at all.

The Tenant did not provide me with copies of the tenancy agreements. As noted above, I have excluded the Landlords' evidence due to their failure to demonstrate service in accordance with the *Act* and Rules of Procedure.

In the face of the evidence before me, I find that the Landlords have failed to show that the Tenant is responsible for paying utilities. Given this, I do not grant this portion of their claim, which is dismissed without leave to reapply.

In total, I grant the Landlords a monetary order of \$10,200.00.

4) Are the Landlords entitled to the return of their filing fee?

The Landlords were largely successful on their application. I grant them their filing fee.

Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

I grant the Landlords an order of possession under s. 55 of the *Act* pursuant to the October 10 Day Notice. The Tenant, and any occupants, shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

I grant the Landlords an order for unpaid rent in the amount of \$10,200.00.

I grant the Landlord their \$100.00 filing fee, which shall be paid by the Tenant.

I total and pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$10,300.00** to the Landlords.

I make no findings cancelling the Two Month Notice and otherwise dismiss the Tenant's remaining claims disputing the various 10 Day Notices without leave to reapply.

As the tenancy is over, the Tenant's claim under s. 62 of the *Act*, which was severed from the application, is dismissed without leave to reapply.

The Tenant's other severed claim for monetary compensation under s. 67 of the *Act* is dismissed with leave to reapply.

It is the Landlords' obligation to serve the order of possession and monetary order on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlords at the BC Supreme Court. Should the Tenant fail to comply with the monetary order, it may be enforced by the Landlords at the BC Provincial 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 *Residential Tenancy Act*.

Dated: December 04, 2023

Residential Tenancy Branch