



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNOP, CNMN, OLC, FFT, OPR-DR, MNR-DR, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on December 12, 2023, and an Application filed by the Landlord on December 18, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- For the Landlord to comply with the Act, regulation and/or the tenancy agreement
- To recover the Application filing fee

The Landlord applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on December 4, 2023
- For a Monetary Order for unpaid rent
- To recover the Application filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord W.F.C. was served on December 16, 2023, in accordance with section 89(1) of the Act.
- I find that the Tenant was served on December 19, 2023, by registered mail in accordance with section 89(1) of the Act.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act.

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement?
3. Is the Tenant entitled to recover the filing fee?
4. Is the Landlord entitled to an Order of Possession based on the Notice?
5. Is the Landlord entitled to compensation for monetary loss or other monies owed?
6. Is the Landlord entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on April 1, 2021, with a monthly rent of \$1,000.00 due on the first of each month. A deposit of \$500.00 was paid. The Tenant's current rent is \$1,015.00.

According to the Landlord representative C.R., a 10 Day Notice was posted on the Tenants door on December 4, 2023, for \$1,015.00 in unpaid rent. The Tenant and Landlord both provided a copy of the 10 Day Notice. Landlord representative C.R. further testified that the Tenant, in addition to the arrears for December 2023, has also not paid rent for January 2024. She stated that the Tenant normally pays by money order and should therefore have proof that he issued one by providing a copy of his copy.

The Tenant testified that he used to use money orders but had recently obtained cheques from his bank and that he wrote a cheque for his December 2023 rent and dropped it in the Landlord's office mail slot as required on December 1, 2023. He further testified that he did the same on January 1, 2024, for his January 2024 rent payment. He stated that the cheques went uncashed therefore he does not know if the Landlord misplaced them or they were taken by someone in the office.

Tenant witness E.C. testified that she saw the Tenant write out the December 2023 rent cheque and drop it through the Landlord's office mail slot on December 1, 2023. She further testified that she did not witness the Tenant drop off his January 2024 rent cheque.

According to Landlord representative C.R., she attended the office on January 1 and 2, 2024 and the Tenant's cheque was not there. She further testified no one has access to the office other than herself and her assistant.

The Tenant was asked why he did not issue a replacement cheque for his December 2023 rent once he was served with the notice and was therefore made aware that there was a problem. He testified that he was not sure and that there have been many issues in the past between himself and the Landlord. He disputed Landlord representative C.R.'s testimony that the office is secure and stated that it is not.

Analysis

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

The Tenant's application for dispute resolution on December 12, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Relying on the testimony of both parties and the Tenant's witness and on a balance of probabilities, I find that the Tenant did not pay the rent due on December 1, 2023, and that the Landlord therefore had a valid reason for issuing the notice.

I find the Tenant's testimony and the testimony of the Tenant's witness that the Tenant switched his payment method from money orders to cheques and that he dropped cheques in the Landlord's mail slot on December 1, 2023 and January 1, 2024 to not be

credible. I find that had the Tenant paid his rent by cheque for both months, he would have immediately cancelled them and issued new ones as soon as he learned that they had not been received and had not been cashed. I further find, based on a balance of probabilities, the likelihood of both payments going missing from a secure office location to be highly improbable.

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

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

This issue was not adjudicated. As the Tenant has been unsuccessful in their application to cancel the 10 Day Notice, this issue is not longer relevant.

The Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to reapply.

Is the Tenant entitled to recover the \$100.00 filing fee?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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

Section 55 of the Act states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - a) the landlord's notice to end tenancy complies with section 52, and
 - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the Act.

The Tenant's application to dispute the Notice has been dismissed.

The Landlord's application for an Order of Possession is hereby granted under section 55 of the Act. I set the effective date of the Order at 1 pm on January 31, 2024.

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

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence submitted and the testimony of both parties, I find that the Landlord has substantiated their claim for unpaid rent for December 2023 and January 2024.

I hereby grant the Landlord a monetary award in the amount of \$2,030.00 for unpaid rent under section 55(4)(b) of the Act. I order the Landlord to retain the Tenant's security deposit in the amount of \$510.75, including interest, in partial satisfaction of the monetary award under section 38(4) of the Act.

Is the Landlord entitled to recover the \$100.00 filing fee?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is granted.

I grant an Order of Possession to the Landlord **effective 1 pm on January 31, 2024, after service of this Order on the Tenant**. Should the Tenant 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 **\$1,619.25** under the following terms:

Monetary Issue	Granted Amount
a monetary award for unpaid rent under section 55 of the Act	\$2,030.00

authorization to retain the Tenant's security deposit including interest under section 38(4) of the Act	-\$510.75
a reimbursement of the filing fee under section 72 of the Act	\$100.00
Total Amount	\$1,619.25

The Landlord is provided with this Order in 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.

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.

The Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, 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: January 26, 2024

Residential Tenancy Branch