



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On December 19, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 20, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with J.V. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no issues with service of the Notice of Hearing packages. As such, I am satisfied that both parties were duly served the other's Notice of Hearing packages. However, the Tenant advised that he did not serve his evidence to the Landlord. As well, the Landlord advised that her additional

evidence was served late, and the Tenant stated that he was not prepared to respond to it. Consequently, the Tenant's evidence and the Landlord's late evidence will be excluded and not considered when rendering this Decision. However, the Landlord's evidence that was served with her Notice of Hearing package will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities cancelled?
- Is the Tenant entitled to more time to cancel the Notice?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fees?
- Is the Landlord entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2021, that the rent was currently established at an amount of \$1,400.00 per month, and that it was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy

agreement was submitted as documentary evidence for consideration.

As well, all parties confirmed that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on December 6, 2023, by being attached to the Tenant's door. The Landlord testified that the Tenant did not pay any rent for December 2023, and thus, the Notice was served. She indicated that the Tenant did not have any authority to withhold the rent, and that he has not paid any rent since service of the Notice. Although, she stated that she received a government subsidy in the amount of \$300.00 for December 2023 rent for the Tenant. The effective end date of the tenancy was noted as December 19, 2023, on the Notice.

The Tenant confirmed that he did not pay any rent for December 2023 and that he did not meet any of the criteria under the *Act* for withholding rent. He also confirmed that he has not paid any rent since service of the Notice. He did not make any submissions with respect to needing more time to dispute the Notice, other than he did not have a place to move to.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted

that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on December 6, 2023. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Notice was received on December 6, 2023, the Tenant must have paid the rent in full or disputed the Notice by December 11, 2023, at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by December 11, 2023, to cancel the Notice. While he disputed this Notice, he did so late, and he did not provide any extenuating circumstances for why he was unable to make this Application on time. As such, his request for more time is dismissed.

As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord’s Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*.

Furthermore, I am satisfied from the undisputed evidence that the Landlord should be entitled to a monetary award for the rental arrears from December 2023 to January 2024.

As the Tenant was successful in his Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

As the Landlord was successful in her Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 46, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for December 2023	\$1,100.00
Rental arrears for January 2024	\$1,400.00
Filing Fee	\$100.00
Total Monetary Award	\$2,600.00

Conclusion

Based on the above, Tenant's Application is dismissed without leave to reapply.

Furthermore, the Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on January 31, 2024**, after service on the Tenant. Should the Tenant or any occupant 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$2,600.00** 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.

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 22, 2024

Residential Tenancy Branch