



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNC, DRI, OLC**

Landlord: **OPC-DR, FFL**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;

An order to dispute a rent increase above the amount allowable under the Act pursuant to section 41; and

An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The landlord applied for:

An order of possession for cause pursuant to sections 47 and 55; and

Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issue

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. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the

commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement signed on August 4, 2022 was provided as evidence. The landlord testified there is a mistake on the tenancy agreement, indicating the agreement starts on August 29, 2023 instead of 2022. The fixed term was to end on September 30, 2023. The rent was set at \$2,875.00 per month, payable on the first day of each month. The landlord testified a second tenancy agreement was signed in September or October 2023 raising the rent to \$2,932.50 per month, but it was not provided as evidence for this hearing.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause via registered mail on November 1, 2023 and the tenant filed his application to dispute it on November 7th. A copy was provided as evidence for this hearing. The reason for ending the tenancy was because the tenant is repeatedly late paying rent.

The landlord gave the following testimony:

- The tenant provided post-dated cheques earlier in the year, up to August 2023.
- The tenant bounced his rent cheques on three (3) occasions – March, April and October 2023 and didn't pay his rent on time in September 2023.
- On March 3rd, the tenant notified the landlord that his cheque had bounced and the tenant e-transferred another rent payment to the landlord that same day.

- In April, the tenant's post-dated cheque bounced, and the landlord's bank notified him of it. The tenant eventually paid April's rent by e-transfer.
- On September 3rd, the landlord notified the tenant via email that he wasn't given any cheques for September's rent. The landlord sent a second reminder on September 5th and testified it was paid that day. By email, the landlord offered to renew the tenant's lease at \$2,932.50 commencing October 1st.
- The tenant's cheque for October bounced again. The tenant paid October's rent in 2 e-transfer installments on October 8 and 9.
- The late payments of rent were affecting the landlord's ability to secure a credit application

The landlord provided a statement from his bank indicating the following:

I see a total of 3 bounced cheques on your account with accompanying screenshots below :

1: MARCH 06, 2023

Mar 06, 2023	RETURNED CHEQUE	2,875.00
--------------	-----------------	----------

2: APR 14, 2023

Apr 14, 2023	RETURNED CHEQUE	2,875.00
--------------	-----------------	----------

3: OCTOBER 10, 2023

Oct 10, 2023	RETURNED CHEQUE	2,932.50
--------------	-----------------	----------

I can also confirm that these items were reviewed while working on your ongoing credit application, where queries were posed on the nature of the same.

Rental income forms a part of income calculation for any credit application and as such it is important for us to understand the nature of such returned cheques.

The tenant gave the following testimony:

- On March 3rd, he was checking his bank account and saw his rent cheque had been redeposited into his bank, meaning it bounced. He told his landlord immediately, offered to pay any NSF fees and e-transferred the amount immediately. The tenant does not dispute the fact that the cheque for March bounced.
- In April, the tenant was suffering from a deep depression due to a breakup. The tenant hadn't responded to anyone for 10 days but realized he needed to speak to his landlord. On April 30, he spoke to the landlord about the issues he was facing. The tenant acknowledges bouncing April's rent cheque.
- For September – the tenant had given the landlord all the cheques in his chequebook all the way until the end of August. He assumed the landlord had a cheque for September but may have overlooked it. It wasn't until the landlord's

email on September 3rd that he realized he hadn't given the landlord a cheque for the first of the month.

- For October, this was the first payment under the new lease agreement. He paid October's rent by cheque and acknowledges it bounced. He sent the landlord two payments, on October 8 and 9, which included NSF fees.

Analysis

I find the notice to end tenancy was served on November 6, 2023, the fifth day after it was sent via registered mail, pursuant to sections 88 and 90 of the Act. The tenant filed an application to dispute the notice within 10 days, as required by section 47, on November 7th. The Act dictates that it's the landlord's onus to prove the reasons for ending the tenancy.

The landlord seeks to end the tenancy pursuant to section 47(1)(b) for repeatedly late paying rent. Residential Tenancy Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

The tenant acknowledges that he bounced his rent cheques for March, April and October, 2023. To be clear, the tenant acknowledges he understood that "bounced" means that there were insufficient funds in his chequing account to cover the amount of the cheque. I am satisfied that the tenant was late paying rent on 3 occasions due to bounced cheques.

Section 26 states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. There is no evidence before me to satisfy me the tenant had any right to deduct all or a portion of the rent, although the tenant may have had personal reasons for not having the funds in his chequing account to cover rent.

Regarding September's rent, the onus falls to the tenant to ensure that the landlord has his cheques before the first day of each month if he intends on paying rent by post-dated cheques. It's not the landlord's responsibility to "chase down" the tenant to get the cheques on the first of the month. I find the tenant to be late paying rent a fourth time, for September, 2023.

For these reasons, I dismiss the tenant's application seeking to cancel the landlord's notice to end tenancy for cause. Section 55 states that the director must grant the landlord an Order of Possession of the rental unit if the landlord's notice complies with section 52 [form and content of a notice to end tenancy] and during the dispute resolution proceedings, the director dismisses the tenant's application. I have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provisions as set out in section 52. The landlord is entitled to an Order of Possession.

As the effective date stated on the notice to end tenancy has passed, the landlord is granted an Order of Possession effective February 29, 2024.

The landlord was successful in his application and the filing fee shall be recovered. The landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of the award.

Conclusion

I grant an Order of Possession to the landlord effective **February 29, 2024**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: February 09, 2024

Residential Tenancy Branch