



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, CNOP, CNMN, MNDCT, DRI, RP, PSF, LRE, OLC, OPR, MNRL-S, LRSD, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on January 15, 2024, and an Application filed by the Landlord on January 19, 2024.

The Tenant applied:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord applied:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act

- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord A.S.G. was served on January 18, 2024, by registered mail in accordance with section 89(1) of the Act.
- I find that the Tenant T.K.C. was served on January 22, 2024, 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 served to the Landlord in accordance with section 88 of the Act.
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Preliminary Matters

At the outset of the hearing, the parties were advised that, as this was a cross-application proceeding, only matters that were shared between the parties would be heard and that all unrelated issues would be dismissed with leave to reapply if still relevant following adjudication of the 10 Day Notice.

Issue(s) to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
2. Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
3. Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
4. Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
5. Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act
6. Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

7. Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
8. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
9. Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act
10. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
11. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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 Landlord indicates that the tenancy began on September 15, 2023, with a monthly rent of \$3,900.00 due on the first of each month. A security deposit of \$1,950.00 was paid. A copy of a tenancy agreement allegedly signed by both parties was submitted by the Landlord as evidence.

Evidence and testimony provided by the Tenant indicates that the tenancy began on September 20, 2023, with a monthly rent of \$2,000.00 due on the first of each month. A security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$950.00 was paid. A copy of a provincial government shelter information form, allegedly signed by the Landlord, was submitted by the Tenant as evidence.

According to the Landlord representative G.S., a 10 Day Notice was served to the Tenant by registered mail on January 8, 2024, for \$5,606.00 in unpaid rent. The Tenant and Landlord both provided a copy of the 10 Day Notice.

Landlord representative G.S. testified that the Landlord is seeking \$4,950.00 in unpaid rent for the period October 2023 to January 2024. He testified that the Tenant has also not paid her February 2024 rent. He further Testified that the Tenant did not pay a pet deposit but rather only paid a single security deposit in the amount of \$1,950.00 based on a monthly rent of \$3,900.00 which was subsequently reduced to \$3,850.00.

According to Landlord representative G.S., the Tenant paid her rent for September 2023 by e-transfer and then issued the Landlord a series of cheques for October, November and December 2023 rent payments. He stated that the Tenant's cheque for October

2023 rent in the amount of \$3,850.00 cleared, however the Tenant's cheque for November 2023 rent in the amount of \$3,850.00 bounced on November 6, 2023 and when the bank subsequently reattempted to deposit the cheque on November 7, 2023, only \$656.00 was successfully collected. He stated that the Tenant issued the Landlord a cheque on November 20, 2023, for the balance owing for November 2023 rent in the amount of \$3,193.92 but that this cheque also bounced on November 23, 2023. Landlord representative G.S. testified that an e-transfer in the amount of \$2,093.92 was received on November 27, 2023, which left a balance owing for November 2023 rent in the amount of \$1,100.00. He testified that the Tenant's December 2023 rent cheque in the amount of \$3,850.00 cleared. Copies of the Landlord's bank statement, tenancy ledger and cheques from the Tenant dated November 1, 2023, in the amount of \$3,850.00, November 20, 2023, in the amount of \$3,193.92 and December 1, 2023 in the amount of \$3,850.00 were submitted by the Landlord as evidence. The Landlord also submitted copies of text message exchanges between the Tenant and the Landlord in which Landlord makes repeated requests for the outstanding rent and the Tenant apologies for the delays and provides various reasons as to the cause including banking issues and investment money transfer delays.

Landlord representative G.S. stated that the alleged signature on the shelter information form provided by the Tenant is not the Landlord's and that his signature was forged. He further stated that the alleged rent receipts for rental payments made by the Tenant in cash are also forgeries as the Landlord as no such payments were received by the Tenant in cash as demonstrated by the fact that e-transfers were made by the Tenant and cheques were provided. He argued that if the Tenant's monthly rent was \$2,000.00 as claimed why did she issue cheques in the amount of \$3,850.00 to the Landlord for her monthly rather than \$2,000.00?

According to the Tenant, she gave the Landlord blank cheques to hold and later be returned following the purchase of the house. She stated that in the interim, while waiting for her money from overseas with which she was intending on using to purchase the Landlord's home on a cash basis, she paid him the agreed amount of \$2,000.00 per month in cash. She stated that a verbal agreement was made between herself and the Landlord that once the purchase was made, the tenancy agreement would be discarded, however, the Landlord unilaterally changed the agreement and said he wanted \$150,000.00 more raising the overall purchase price to 1.45 million dollars and that this is when problems began between them. The Tenant alleged that the Landlord subsequently completed the cheques himself and then attempted to cash them. The Tenant asked why would a bank attempt to cash the cheques three times and withdraw

only a portion of the funds rather than reject the whole cheque? She further argued that the Landlord's bank records don't show who the cheques were from.

The Tenant's witness M.W. testified that the Tenant initially told him that the Landlord had agreed to \$2,000.00 and to sell the Tenant the house once her money arrived from overseas but that he later spoke to the Landlord about these matters on the telephone on two occasions but could not recall when the discussions took place other than it was around the end of last year.

The Tenant testified that she paid the Landlord \$1,266.66 in cash for September 2023 rent, \$2,000.00 in cash for October 2023, \$2,000.00 in cash for November, \$2,000.00 by cheque for December 2023, \$2,000.00 in cash for January 2024 and \$2,000.00 in cash for February 2024. The Tenant provided copies of receipts as follows:

1. \$1,266.80 issued September 20, 2023, method of payment cash/ e-transfer for half month's rent and \$266.80 carpet cleaning for the period September 20, 2023 to October 1, 2023.
2. \$2,000.00 issued October 1, 2023, method of payment check for the period October 1, 2023 to September 1, 2023.
3. \$1,950.00 issued November 1, 2023, method of payment check for a \$1,000.00 security and \$950.00 pet deposit.
4. \$2,000.00 issued November 1, 2023, method of payment e-transfer for the period November 1, 2023 to December 1, 2023.
5. \$2,000.00 issued December 1, 2023, method of payment cash for the period December 1, 2023 to January 2024.
6. \$2,000.00 issued January 5, 2024, method of payment cash/ e-transfer for the period January 1, 2024 to February 1, 2024.

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*.

I find, based on the evidence submitted, the testimony provided and on a balance of probabilities that the Tenant and Landlord entered into a tenancy agreement of \$3,850.00 and that the Tenant owed the Landlord \$4,950.00 at the time the 10 Day Notice was issued. I find the Tenant's claim that the Landlord had agreed to rent an entire house for \$2,000.00 per month based on a shelter document that does not contain any case number information and is readily available for download on the province's website to not be credible. I further find that the dates and deposit amounts on the Landlord's banking records match the dates and amounts on the cheques issued by the Tenant match and are consistent with a monthly rent of \$3,850.00.

I find the Tenant's claim that the parties had agreed to the sale of the home and that she had issued blank cheques to the Landlord to later be returned after the sale was completed and paid him cash in the interim to not be credible. I find that the Tenant has not provided any proof of a purchase agreement and that evidence was submitted by the Landlord that indicates the Tenant first inquired about it on November 7, 2023, via a text message. I find that it is unreasonable to believe that the Tenant would issue blank cheques to another party for any reason including proposed real-estate purchases and therefore I can only conclude that she issued the cheques for the purpose for which they were written, namely the payment of rent. I find the Tenant's testimony that the Landlord filled out the blank cheques without her permission and that she made her payments for rent by cash is not credible and that her testimony does not match the information on the receipts and lacks any explanation as to why a party receiving payment by cheque or e-transfer would need to issue a handwritten receipt when a receipt has already been provided by virtue of an electronic transaction or record of deposit.

Based on the above, I find that the 10 Day Notice was valid.

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 a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

This issue was not adjudicated.

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed with leave to reapply.

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

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 regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act is dismissed without leave to reapply.

Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act?

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 make repairs to the rental unit under sections 32 and 62 of the Act is dismissed without leave to reapply.

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

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 provide services or facilities required by law under section 27 of the Act is dismissed without leave to reapply.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

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 to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) 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 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. Considering the time of year, the conditions in the rental market and the involvement of children, I set the effective date of the Order at 1 pm on March 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 November 2023 and January and February 2024.

I hereby grant the Landlord a monetary award in the amount of \$8,800.00 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 \$1,969.74, 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 March 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 **\$6,930.26** under the following terms:

Monetary Issue	Granted Amount
a monetary award for unpaid rent under section 55 of the Act	\$8,800.00
authorization to retain the Tenant's security deposit including interest under section 38(4) of the Act	-\$1,969.74
a reimbursement of the filing fee under section 72 of the Act	\$100.00
Total Amount	\$6,930.26

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 a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed with leave to reapply.

The Tenant's application for an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act is dismissed without leave to reapply.

The Tenant's application for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act is dismissed without leave to reapply.

The Tenant's application for an order for the Landlord to provide services or facilities required by law under section 27 of the Act is dismissed without leave to reapply.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) 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.

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 28, 2024

Residential Tenancy Branch