



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDC, RR, ERP, RP, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, filed on January 22, 2024, under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- an order for compensation from the Landlord for monetary loss or other money owed under section 67 of the Act
- an order for the Landlord to reduce rent for repairs, services or facilities agreed upon but not provided under section 65(1) of the Act
- an order requiring the Landlord to make emergency repairs to the property, under section 33 of the Act
- an order requiring the Landlord to make repairs to the property under section 32 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution, filed on January 23, 2024, under the Act for:

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

Landlord H.Y. attended the hearing for the Landlord.

Tenant L.T. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord denied being served the Tenant's Proceeding Package by the Tenant but received it from the Residential Tenancy Branch on January 23, 2024. The Landlord further testified that they did not receive the Tenant's evidence. The Tenant testified that they relied on the Service B.C. office to provide their evidence to the Landlord. I find that under section 71(2)(b) of the Act that the Landlord was sufficiently served with the Tenant's Proceeding Package on January 23, 2024. I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act and could not be relied upon in the hearing.

The Tenant denied being served with the Landlord's Proceeding Package and evidence. The Landlord testified that they served the Landlord's Proceeding Package and evidence together on January 23, 2024 in person to the Tenant. The Landlord provided RTB Form 55 indicating proof of service which was signed by a witness. I find that the Tenant was served with the Landlord's Notice of Dispute Resolution Package and Landlord's evidence in accordance with section 88 of the Act.

Preliminary Matters

The Landlord's legal name was corrected.

Under the *Residential Tenancy Branch Rules of Procedure*, Rules 2.3 and 6.2 if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

The Landlord sought to increase their claim for unpaid rent from \$6,000.00 to \$12,000.00 to reflect the Tenant's failure to pay \$6,000.00 in monthly rent for February 2024. The Landlord also sought to increase their monetary claim for unpaid utilities from \$740.00 to \$2,000.00 to reflect the Tenant's failure to pay for additional unpaid utility bills waiting for this hearing.

Issue(s) to be Decided

Should the Landlord's 10 day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

Is the Tenant entitled to recover the filing fee?

Is the Landlord entitled to recover the filing fee for their cross application?

Background and Evidence

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

The parties entered into a Tenancy agreement which began on October 1, 2023, and was for a fixed term of one year. Rent in the amount of \$6,000.00 was due on the first day of each month. The Tenant was responsible for the costs of water, sewer, electricity, and heat. The Landlord was responsible for the costs of garbage collection. The Tenant provided to the Landlord a security deposit of \$3,000.00 at the beginning of the tenancy.

After the Tenant did not pay rent on January 1st, 2024, the Tenant and the Landlord agreed that the Tenant would pay rent by January 15, 2024. On Jan 16, 2024, the Tenant had not paid rent for the month of January, so the Landlord served the 10 Day Notice on the Tenant in person. The date the Tenant was to move out according to the 10 Day Notice was January 26, 2024. The 10 Day Notice claimed \$6,000.00 for unpaid rent and did not claim anything for unpaid utilities. The Landlord's monetary worksheet lists \$6,000.00 for unpaid rent and nothing for unpaid utilities.

On January 22, 2024, the Tenant made an Application for Dispute Resolution which included a claim to cancel the 10 Day Notice. The Tenant amended their claim on January 26, 2023. The Tenant's also applied for a monetary order for loss or other money owed in the amount of \$3,500.00, to reduce rent for repairs service or other facilities agreed upon but not provided in the amount of \$5,000.00, and for the return of the \$3,000.00 security deposit.

The Landlord stated that when the 10 Day notice was issued, the rent owing was \$6,000.00. No rent was paid for February either, so rent due at time of hearing was \$12,000.00. Further, utilities were unpaid and the total amount due was approximately \$2,000.00. An account statement from BC Hydro was submitted showing \$1,284.42 outstanding as of January 25, 2024, and a statement for utilities from the District of Saanich shows amount due of \$1,04.50 as of January 26, 2024. The District of Saanich bill included charges for garbage.

The Tenant stated they live in the home with their family of six people and would be able to move out at the end of February. The Tenant testified that the utility bill is high because of the poor, deteriorated condition of the home and the home is losing heat because repairs are needed. The Tenant testified that the repairs needed are not an emergency and that the work has not yet been completed. Tenant admitted that they had not made rent payments when due in January and February. The Tenant stated that some of their clients had not paid them, so they were unable to pay their rent. The Tenant acknowledged personally receiving the 10 Day Notice and did not pay any rent after it was issued.

Analysis

Should the Landlord's 10 day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy.

As I have found the 10 Day Notice was duly served to the tenant(s) on January 16, 2024, I find the Tenant had until January 22, 2024 to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant did file this dispute within the required time but has provided no lawful reason to not pay rent.

Section 55(1) of the Act states that, if the Landlord's notice to end tenancy complies with section 52 of the Act, the director must grant the Landlord an Order of Possession if the Landlord's notice to end tenancy is upheld during the dispute resolution proceedings. Having reviewed the Landlord's notice to end tenancy, I find it complies with the form and content as set out in section.52. Accordingly, I grant the Landlord an Order of Possession.

The 10 Day Notice has been completed properly. I uphold the Landlord's 10 Day Notice and dismiss the Tenant's application to cancel the 10 Day Notice. In consideration of the fact that the Tenant has a family of 6 people living with him, I grant an Order of Possession effective March 31, 2024, after service upon the tenant. Should the Tenant

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.

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

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a Landlord's notice to end tenancy under section 25 of the Act for non-payment of rent, and the application is dismissed the Arbitrator must grant the Landlord an order requiring repayment of the unpaid rent.

The Landlord's claim was for \$6,000.00 in rent for January 2024, and I add to that unpaid rent for February 2024 and March 2024. Under section 72 of the Act, I authorize the Landlord to retain the \$3,000.00 security deposit to offset the monetary award. Therefore, I find the Landlord is entitled to a \$12,000.00 for unpaid rent.

Under Rule 6.2 of the Rules of Procedure, a claim is limited to what is stated in the application. The 10 Day Notice and the Landlord Application for Dispute Resolution did not indicate that utilities were being sought. This claim was only made incidentally on the Landlords application for Rent and brought up during the hearing. The claimed unpaid utilities were also not included on the Landlord's monetary worksheet. I find that the I cannot consider the claim for unpaid utilities because it was not properly identified in the Landlord's Application. The Landlord may reapply for this claim.

Is the Tenant entitled to recover the filing fee for this application from the Tenant?

As the Tenant was unsuccessful in their claims, the Tenant's application for authorization to recover the filing fee from the Landlord under section 72 of the Act is dismissed without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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

I grant an Order of Possession to the Landlord **effective by 1:00 PM on March 31, 2024, after service of this Order on the Tenant(s)**. Should the Tenant(s) 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 **\$9,100.00** under the following terms:

| Monetary Issue | Granted Amount |
|--|-----------------------|
| a Monetary Order for unpaid rent under section 55 of the Act | \$12,000.00 |
| Security deposit retained | -\$3,000.00 |
| Filing Fee | 100.00 |
| Total Amount | \$9,100.00 |

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 (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 compensation from the respondent for monetary loss or other money owed under section 67 of the Act is dismissed without leave to reapply.

The Tenant's application for an order for the respondents to reduce rent for repairs, services or facilities agreed upon but not provided under 65(1) of the Act is dismissed with leave to reapply.

The Tenant's application for an order requiring the respondents to make emergency repairs to the property under section 33 of the Act is dismissed with leave to reapply.

The Tenant's application for an order requiring the respondents to make repairs to the property under section 32 of the Act is dismissed with leave to reapply.

The Tenant was not successful in this application and the application for authorization to recover the filing fee for this application from the Landlord 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: March 18, 2024

Residential Tenancy Branch