



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR x 2, MNDCT, LRE, OLC
Landlord: OPR MNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on June 18, 2024.

The Landlords and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending, and how much rent is owing at this time. As a result, I exercised my

discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

Further, since the issues that the Landlords have cross-applied for all relate to the Notice and the end of the tenancy, they will be considered in this hearing.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlords' Notice cancelled?
 - If not, are the Landlords entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$2,480.90 was to be paid on the first of each month.

The Landlord stated that the Tenant paid April rent within 5 days of receiving the 10 Day Notice that month, so they wish to focus on May and June rent.

With respect to May and June rent, the Landlords stated that they never received any rent for those months, even after serving the 10 Day Notice in May. The Landlords provided a proof of service document, which was signed by a third party witness. A photo was also provided showing this document was taped to the Tenant's door on May 2, 2024. The Landlord stated that no rent has been paid since that time, and the Tenant now owes May and June rent.

The Tenant stated that he lost his job in late April 2024, and was without work until May 5, 2024, when he got a new job. The Tenant stated that during this time, he was without sufficient funds to pay rent, and was having trouble getting the Government to assist him with rent because they could not contact the Landlord to facilitate payment. The Landlord denies ignoring calls from the government, and they assert no one attempted to contact them.

The Tenant stated that he tried to tell the Landlord that he would be late paying rent because of his work issues, but the Landlord was not helpful or responsive to the problem.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I find the 10 Day Notice from April is of no force or effect, since both parties agree that the Tenant paid all that rent within the allowable 5 day window.

With respect to the Notice, dated May 2, 2024, I note the Landlord has provided a proof of service document, signed by a third party, along with a photo of the 10 day notice that was posted to the Tenants door. Although the Tenant stated there was no notice attached to his door on this date, I find the evidence sufficiently demonstrates that it was. Pursuant to section 90 of the *Act*, I find the 10 Day Notice was deemed to be received by the Tenant on May 5, 2024, 3 days after it was posted to his door.

The Tenant applied to cancel the 10-day notice on May 8, 2024, which was within the allowable time frame. However, he failed to make any rent payments after receipt of the 10 Day Notice. I also find there is insufficient evidence that he had any legal basis to withhold rent payments. I note the Tenant asserts he tried to get the government to pay his May rent, and that the Landlord refused to respond to their attempts to contact. However, the Tenant failed to explain which of the Landlord's phone numbers were provided by him to the government for rent assistance, and I am not satisfied the Landlord was obstructing any payment attempts.

Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed, in full, without leave. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective 7 days after it is served on the Tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of May and June 2024 (\$2,480.90 x 2).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$4,961.80
Other:	
Filing fee	\$100.00
TOTAL:	\$5,061.80

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **7 days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,061.80**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 18, 2024