



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Tenant: CNR, MNRT, MNDCT, DRI, RP, PSF, LAT, OLC
For the Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The Tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the Landlord
- compensation for the cost of emergency repairs
- compensation for a monetary loss or other money owed
- to dispute a rent increase that is above the amount allowed by law
- an order requiring the Landlord to make repairs to the rental unit
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act
- authorization to change the locks to the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement

The Landlord applied against Tenant MS only for:

- an order of possession of the rental unit pursuant to the Notice served to the Tenant
- a monetary order for unpaid rent
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires. The Landlord DD said they were an agent for their brother, HD, and have been the agent for the entire tenancy.

The Landlord confirmed receiving the Tenant's Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, and evidence (Proceeding Package).

The Tenant denied receiving the Landlord's proceeding package. The Landlord provided photographic evidence that they posted their proceeding package to the Tenant's door on June 7, 2024. For this reason, I find the Tenant was sufficiently served the Landlord's proceeding package in accordance with s. 89(2) of the Act.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

Preliminary Issue –

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the Tenant listed multiple claims. I find the most urgent matter to consider is the Tenant's request for cancellation of the Notice. I find the seven additional claims are not sufficiently related to whether this tenancy could end or continue, which I find is the primary issue. The balance of the Tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the Notice?

Is the Landlord entitled to an order of possession of the rental unit due to unpaid rent and monetary compensation from the Tenant for unpaid rent?

Is the Landlord entitled to recovery of the filing fee paid for their application?

Background and Evidence

There was no written tenancy agreement from the beginning of the tenancy. The Landlord said the tenancy began about 6 years ago. Neither party filed a copy of the original tenancy agreement.

The Tenants filed a copy of a written tenancy agreement dated September 7, 2020, between the Landlord/owner, HD, and the Tenants, MS and JP. The tenancy start date listed is September 1, 2020, despite the tenancy having been ongoing for about two years, with a monthly rent of \$1300.

The Landlord filed a written tenancy agreement, signed on August 23, 2023, which indicates a monthly rent of \$1600 beginning September 1, 2023. For this tenancy agreement, the Landlord listed only MS as the Tenant, and did not include JP. When asked why the Landlord did not list JP as a Tenant, like they did on the first two written tenancy agreements, the Landlord gave evasive answers, such as, they did not see JP in the rental unit.

The Tenant agreed that beginning in September 2023, they paid the monthly rent of \$1600, through April 2024. The Tenant claims that they overpaid rent by \$300 each month from September 2023 through April 2024, when they began paying the rent of \$1600 due under the September 2023 tenancy agreement, instead of the monthly rent due under the September 2020 tenancy agreement, through April 2024. The Tenant claims this was an illegal rent increase.

On May 16, 2024, the Landlord served the Tenant, MS, with a 10 Day Notice, by attaching it to the Tenant's door. The Notice was signed and dated May 16, 2024, listed an effective move-out date of June 3, 2024, and unpaid rent of \$1600 due on May 1, 2024. The Tenant said in their application they received the Notice on May 18, 2024. The undisputed evidence is that the Tenant did not pay the rent for May and June 2024.

During the hearing, a mediated discussion occurred, resulting in a mutual agreement that the tenancy would end on a specific date.

The parties were informed that I would record their mutual agreement in a written Decision, as noted below, and confirming that the settlement was a voluntary, mutual decision, to which they agreed.

The remaining issue I must decide is whether the Landlord is entitled to a monetary order for unpaid rent, which I will address below.

Partial Mutual Agreement – order of possession of the rental unit

The terms of the settlement are as follows:

1. The Tenant, MS, and the Landlord agreed that this tenancy will end by 1:00 pm on July 5, 2024, by which time the Tenant agreed to have vacated the rental unit.
2. The parties understood that the Landlord will be issued an order of possession (Order) for the rental unit, based upon the settled agreement, effective no earlier than July 5, 2024 at 1:00 pm.
3. The Order issued to the Landlord is cancelled and of no force or effect if the Tenant vacates by July 5, 2024, at 1:00 pm.

I order the parties to comply with the terms of their mutual agreement.

The Tenant is cautioned that if enforcement becomes necessary, costs of enforcing the order of possession, **such as bailiff fees**, are recoverable from the Tenant.

Analysis

Tenant's application

On the remaining issue of unpaid rent, based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Under s. 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. In this case, although the Tenant filed an application, it was well beyond the five days allowed. The Tenant received the Notice on May 18, 2024, according to the Tenant, and did not file their application until May 31, 2024.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of s. 52 of the Act.

In this case, it was not clear if the tenancy for JP was ever legally ended, as the Landlord failed to include JP, who was, and remained a Tenant, on the new tenancy agreement. The Landlord provided vague and evasive answers as to why this was the case.

I, however, find that Tenant, MS, did sign a tenancy agreement on August 23, 2023, which they did not have to do, agreeing to pay the monthly rent of \$1600 beginning September 1, 2023. For this reason, MS was legally obligated to pay \$1600 per month to the Landlord. The evidence shows they continued to pay the monthly rent of \$1600 through April 2024.

Both Tenants, particularly JP, who was not a part of the new tenancy agreement, had the opportunity to file for dispute resolution if they disagreed with the monthly rent of \$1600 since September 2023, but did not until being served a 10 Day Notice in May 2024.

For this reason, I find the Landlord submitted sufficient evidence to show that the monthly rent was owed, but not paid for the months of May and June 2024, for a total of \$3200 in unpaid rent.

Pursuant to s. 55(1.1) of the Act, I order the Tenant to pay the Landlord the amount of \$3200. To give effect to this order, I grant the Landlord a monetary order for the amount of their monetary award of \$3200 under s. 67 of the Act.

Should the Tenant fail to pay the Landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The Tenant is **cautioned** that costs of such enforcement are recoverable from the Tenant.

Landlord's application

I find it was not necessary for the Landlord to make an application as they would have been issued a monetary order and order of possession of the rental unit through the Tenant's application, if the 10 Day Notice was upheld.

For this reason, I decline to consider the Landlord's application. Additionally, for this reason, I dismiss the Landlord's request for recovery of the filing fee, without leave to reapply.

Information for the parties

The parties were advised in the hearing that once their tenancy agreement is signed, they are not required to continue to sign new tenancy agreements throughout the tenancy. While the Landlord may want to increase the rent more than legally allowed by having the Tenant sign a new tenancy agreement, the Landlord may want to reconsider this practice for future tenancies.

Conclusion

The parties have reached a partial mutual agreement on the Tenant's application.

The Landlord is granted an order of possession of the rental unit effective no earlier than 1:00 pm on July 5, 2024.

I have granted the Landlord a monetary order in the amount of \$3200, which is the unpaid rent for May and June 2024.

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 28, 2024

Residential Tenancy Branch