



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants' application: CNC, CNR, MNDC, RR, RP, LRE, OLC, FF
Landlords' applications: OPR, MNR, OPC, FF

Introduction

This hearing convened to deal with the parties' respective applications for dispute resolution (applications) seeking remedy under the Residential Tenancy Act (Act).

The Tenants, in their original application and amended applications, applied for the following:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the Landlord
- an order cancelling the One Month Notice to End Tenancy for Cause (Notice/One Month Notice) issued by the Landlord
- compensation for a monetary loss or other money owed
- a reduction in monthly rent
- an order requiring the landlord to make repairs to the rental unit
- an order suspending or setting conditions on the landlord's right to enter the rental unit
- authorization to change the locks to the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement
- recovery of the filing fee

The Landlords filed two different applications, which combined applied for:

- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause served to the tenants
- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served to the tenants
- a monetary order for unpaid rent
- recovery of the filing fee x 2

The Residential Tenancy Branch (RTB) administratively joined the Landlord's second application with the hearing on the parties' cross applications.

Those listed on the cover page of this Decision attended the hearing. All apart from the respective legal counsels were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing began on August 16, 2024, and was adjourned. An Interim Decision was made August 19, 2024, which is incorporated by reference and should be read in conjunction with this Decision.

As noted in the Interim Decision, the reconvened hearing was to begin with consideration of the 10 Day Notice.

During the 96-minute hearing, a considerable amount of testimony and submissions were made in relation to the 10 Day Notice. A summary of the submissions and evidence is provided below and includes only that which I find is relevant to the proceedings.

Preliminary Matters-

Service of the parties' respective evidence for the 3 applications for dispute resolution before me was discussed and it appeared that both parties had received the other's evidence. The parties were informed that if during the hearing the other party referenced evidence they did not have, they were to inform me. I note that no one mentioned evidence issues during the hearing.

Issue(s) to be Decided

Should either the 10 Day Notice or One Month Notice be cancelled and if not, is the Landlord entitled to an order of possession of the rental unit?

Should the other issues listed in the respective applications be dismissed with or without leave to reapply?

Is either party entitled to recover the filing fee?

Background and Evidence

To give context to these disputes and the respective issues raised, the parties have been in dispute resolution numerous times preceding these applications. The six known previous files are listed on the cover page of this Decision.

In a Decision of April 5, 2023 (April 5 Decision), on the file with the last 4 digits, 3157 listed on the cover page, the Landlord was granted an order of possession of the rental unit by another arbitrator, effective 2 days after service. The Tenants filed for a judicial review, in which the Supreme Court of British Columbia upheld the April 5 Decision by dismissing the appeal. Following that, the Tenants filed for a stay of execution with the Court of Appeal of the Orders arising out of the May 29, 2024 Judgment of the Supreme Court. The document was filed in evidence.

In an Order of July 17, 2024, the Court of Appeal dismissed the Tenants' application for a stay of execution. However, the Interim Stay Order issued by the Supreme Court justice staying the execution of the Orders was extended until July 31, 2024, "after which time the Interim Stay Order is extinguished".

Further the Order of July 17, 2024, states the following:

IT IS FURTHER ORDERED that by consent, the Respondent (Landlord) shall forgive the Appellants' (Tenants) obligation to pay the July 2024 rent owing under the tenancy agreement between the Appellants and Respondent and the Respondent shall not pursue the Appellants for the aforementioned rent, if and only if the Appellants provide full, vacant possession of the rental premises by the end of July 31, 2024:

The Court allowed the Tenants to apply to extend the Interim Stay Order beyond July 31, 2024.

The Tenants did apply and on July 31, 2024 were granted a stay of execution of Residential Tenancy Branch April 5 Decision until the hearing on the review application, or November 15, 2024, whatever occurs first. This document was filed in evidence.

I was not made aware of whether a hearing on the review application had been scheduled; however, I do not find that is a matter relevant to this Decision, and is only provided for context and background.

In a Decision of April 23, 2024, corrected on May 3, 2024 (May 3 Decision), on the file with the last four digits, 6411 listed on the cover page, another arbitrator dealt with the Tenants' application for an order cancelling an earlier 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, among other issues. In the May 3 Decision, the arbitrator dealt with the terms from the December 13 Decision.

The arbitrator for the May 3 Decision dealt with whether the Tenants owed rent after deductions taken by the Tenants from the December 13, Decision. In that Decision, the arbitrator, while ultimately cancelling the 10 Day Notice in dispute, made a finding that the Tenants have no authority to make any further deductions on the basis of the December 13 Decision.

In the case before me, the Tenant, SG, testified and confirmed that they moved into the rental unit on February 14, 2012, with a monthly rent of \$1750, and that the current monthly rent is \$1924. The written tenancy agreement filed in evidence indicates that the monthly rent is due on the last day of the month. When asked to confirm, SG testified that the rent payment due on the last day of the month was for the following month's rent. I note that the Tenants' counsel objected to the Tenant's testimony at that point; however, the testimony was already given.

The 10 Day Notice, which was signed and dated July 1, 2024, was served to the Tenants on July 2, 2024, by registered mail, according to the written statement of AG, which listed the Canada Post tracking number. The 10 Day Notice listed an effective move-out date of July 11, 2024, and unpaid rent of \$1924 due as of June 30, 2024.

The Tenants confirmed on their application receiving the Notice on July 4, 2024, by registered mail. The Tenants initiated their application for dispute resolution seeking cancellation of the 10 Day Notice on July 8, 2024, and completed the process on July 9, 2024.

In support of their application disputing the 10 Day Notice, the Tenants described why they were disputing the Notice by writing the following, with redaction:

*The landlord owes us money ordered by the RTB for emergency repairs not done. A monthly rent reduction was also ordered. See File number *****6995 Decision dated: December 13.2023*

Landlord's counsel

Counsel submitted that the monthly rent is due on the last day of the month preceding each month and further submitted that the May 3 Decision established that monthly rent was due on the last day of the month for the next month. The monthly rent of \$1924 for July 2024 was therefore due on June 30, 2024. Further, the Tenant's own evidence shows that they did not pay the July 2024 rent until July 31, 2024, along with a payment for the August 2024 rent of \$1924, also on July 31, 2024.

Counsel submitted that the Tenants were wrong with what they put in evidence as they had no authority under the Act to deduct any rent, which was also established in the May 3 Decision and that this Decision provides full clarity as to any rent reductions given to the Tenants by the December 13 Decision. Counsel submitted that the sum still owing to the Tenants under the May 3 Decision, or \$136, was given to the Tenants. The Tenants paid the balance mentioned in that Decision of \$118 that they owed and paid the full rent of \$1924 for June 2024.

Counsel argued that the fact the Tenants paid \$1924 shows they owed it, they knew they owed it, and knew they had no grounds for withholding the rent.

Landlord's Witness AG

AG testified that their involvement with this tenancy is to handle service of the Notices to end the tenancy and accounting regarding rent payments. AG said that the 2 payments of rent by the Tenants on July 31, 2024, were made electronically.

Tenants' Counsel

Counsel submitted that the Tenants' payment of the July 2024 rent on July 31, 2024, falls under section 66(2)(a) for exceptional circumstances where the Tenants could have been evicted at anytime by the Court of Appeal. Counsel submitted that there was a parallel proceeding in the Court of Appeal, and they thought they were being evicted

on June 28, 2024 provided exceptional circumstances. Counsel cited *LaBrie v Liu*, 2021 BCSC 2486 at paragraph 2 to argue the arbitrator has residual discretion to consider exceptional circumstances.

Counsel cited *Guevara v Louis*, 2020 BCSC 380, at paragraph 63, and submitted that the legal doctrine of estoppel applied to this dispute, as the Landlord has been forgiving of past late payments of rent.

Counsel argued that the past Decisions between these two parties have been inconsistent as to when the rent payments were due under the tenancy agreement, in that some Decision stated the rent was due on the first day of the month and others on the last day of the month prior. Given this inconsistency, it is not clear if the monthly rent is due on the last day or the first day.

PG testified that they thought they were going to be out of the rental unit on June 28, 2024, and that they had a new deal when they were not forced out.

SG testified that did not know if they would get their appeal to the Court of Appeal in time. SG said they were packed and ready to go at that time and are still packed.

In rebuttal, Landlord's Counsel said the Tenants only knew on July 17, 2024 that their application for a stay of execution of the Orders arising out of the Supreme Court was dismissed and that the Interim Stay was extended to July 31, 2024. Because the Tenants did not vacate the rental unit, they forfeited their ability to not have to pay the July 2024 rent.

Landlord's Counsel submitted that it was well established throughout this tenancy that the monthly rent was due on the last day of the month for the following month.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Tenants' application

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 46(1) of the Act, a landlord may end the tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. In this case, although the effective move-out date on the 10 Day Notice is July 11, 2024, the Tenants received it on July 4, 2024, resulting in the effective move-out date being automatically changed to July 14, 2024.

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.

The evidence shows the Tenants filed their application within the required time allowed.

I have reviewed the Notice and find it complies with section 52 [*form and content of notice to end tenancy*].

I do not accept the arguments of the Tenants' legal counsel that the Tenants were unclear if the monthly rent for any particular month was due on the day before the month or the last day of that month. The Tenant SG confirmed in their affirmed testimony that the monthly rent was due on the last day of the month for the next month. The Tenants paid the June 2024 rent in full on May 31, 2024, and paid the August 2024 rent in full on July 31, 2024. The Tenants had the chance in their application and evidence to raise this as an issue, but did not. Rather, this was only raised in oral submissions by the Tenants' legal counsel.

I find the Landlord submitted sufficient evidence that the Tenants owed the monthly rent for July 2024, on June 30, 2024, and that on the day the 10 Day Notice was served to the Tenants, they owed the amount listed on the Notice, or \$1924 owed as of July 1, 2024. Further, the clear evidence of both parties is that the Tenants did not pay the rent for July within 5 days of service, instead they elected to pay the rent in full on July 31, 2024.

Further, a Tenant may dispute the 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent as follows:

1. To recover an illegal rent increase, pursuant to section 43(5) of the Act;
2. For a security deposit or pet damage deposit that is over the allowable amount, pursuant to section 19 of the Act;
3. For the cost occurred to complete an emergency repair, pursuant to section 33 of the Act; or
4. An order from an Arbitrator allowing a deduction or with written permission of the landlord.

There were no allegations raised regarding recovery of an illegal rent increase, recovery of a security deposit or pet damage deposit over the allowable amount, or that they completed an emergency repair. The Tenants said they were unsure if they were having to leave the rental unit on June 28, 2024, to justify that they did not pay the monthly rent for July 2024.

In this instance, the Tenants raised a defense in their application that the Landlord owes them money for emergency repairs not done, as addressed in the December 13 Decision. That Decision allowed the Tenants to make rent reductions with certain conditions.

The May 3 Decision **specifically states** that the Tenants had no authority to make any further additional rent reductions on the basis of the December 13, 2023 Decision. The Tenants failed to file into evidence the May 3 Decision with their application to support their statements, only the December 13, 2023, and an earlier 2024 Decision that dealt with another 10 Day Notice. The Landlords, however, did file the May 3 Decision in evidence, and eventually on August 9, 2024, the Tenants filed a copy of the May 3 Decision.

I therefore find the Tenants' statement on their application in dispute of the 10 Day Notice intentionally deceptive and false. The Landlords did not owe the Tenants money as claimed in their application filed on July 8, 2024. The May 3 Decision specifically found that the Landlord met all the requirements from the December 13, 2023, Decision, and that the Tenants had no authority to make any further rent reductions. I find the Tenants had no misunderstanding of this Decision as they not only paid the full rent for May 2024, they paid the full rent for June 2024 according to the evidence.

For all these reasons, I find the Tenants had no legal right to deduct all or a portion of the monthly rent for July 2024.

In addressing a further argument of the Tenants' legal counsel, I decline to extend the time limit established under section 46 of the Act for the Tenants to pay the rent. While there may have been proceedings initiated by the Tenants in the Supreme Court and the Court of Appeal on an earlier order of possession given to the Landlord in April 2023, I find this has nothing to do with the Tenants' obligation to pay the monthly rent while they still occupied the rental unit. The Tenants were put on notice from the Landlord the monthly rent for July 2024 was owed, and they failed to pay within 5 days. The Court of Appeal stay extension of July 17, 2024, dealt with the earlier order of possession and only by consent with the Landlord's legal counsel did agree that the Landlord would not pursue the Tenants for the July rent **if** they gave vacant possession. As the Tenants did not, the Landlords had the right to pursue their application seeking enforcement of their 10 Day Notice.

I find the matters before me are distinguished from the matters in the *LaBrie* case, as that case dealt with a continuing \$1.00 shortfall in rent, leading to a claim the Landlord had acquiesced by accepting the rent payments. In the present case, the evidence shows that the Landlord dealt with previous rent shortfalls by issuing at least two 10 Day Notices prior to the one in this dispute. In this case, there was not a rent shortfall, the rent was simply not paid until a month after it was due.

Further, there was no reversal of the burden of proof, as the evidence of both parties on their face showed the Tenants received the 10 Day Notice, showing a rent deficiency of \$1924 owed as of June 30, 2024, receipt of the Notice on July 4, 2024, and payment of rent on July 31, 2024. The Tenant SG confirmed their understanding that monthly rent was due on the last day of the month before.

It then became the Tenants' responsibility to prove they were allowed to not pay the rent, and that matter has been addressed in this Decision.

I find the matters before me are distinguished from the matters in the *Guevara* case as to counsel's arguments that estoppel applies in this case. I find this was an argument made, but not supported by evidence of past payments. The Tenants' evidence shows receipts issued to the Tenants for the April and May 2024 rent was for "use and occupancy". Further *Guevara* reflects rent payments made a day or two late.

Having found the Landlord submitted sufficient evidence to prove that the Tenants owed the unpaid rent listed on the Notice served to the Tenants, and they did not pay the outstanding rent within 5 days of receipt, I find the tenancy has ended for the Tenants' failure to pay rent when due and the Landlord is entitled to regain possession of the rental unit.

I therefore **dismiss** the Tenants' application seeking cancellation of the 10 Day Notice, without leave to reapply.

In turn, I grant the Landlord's application for an order of possession of the rental unit based on their 10 Day Notice.

Using my authority under section 68(2)(a), with further explanation under Tenancy Policy Guideline 3 (E), I order the tenancy ended on September 5, 2024, the date of the hearing.

I find that the Landlord is entitled to, and I therefore **grant** them an order of possession for the rental unit (**Order**) pursuant to section 55(1) and (2) of the Act. Taking into account the length of tenancy, but also taking into account the Tenants statement that they are already packed, I issue the Landlord an order of possession of the rental unit effective at 1:00 pm September 30, 2024, which allows them to overhold beyond the date the tenancy has been ordered ended.

Should the Tenants fail to vacate the rental unit pursuant to the terms of the Order after it has been served upon them, this Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The Tenants are informed that costs of such enforcement, **including bailiff removal fees and court costs**, are recoverable from the Tenants.

Remaining issues, Tenants' application

Are the Tenants entitled to an order cancelling the One Month Notice?

I find this issue is moot as I have ordered the tenancy ended pursuant to the 10 Day Notice.

I decline to consider this request.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

I dismiss this claim of \$900, without leave to reapply. This request was for alleged non-compliance of the December 13, 2023, Decision. Per the May 3 Decision, the matters relating to the December 13, 2023 Decision have been conclusively dealt with, as previously mentioned in this Decision.

Are the Tenants entitled to a reduction in rent?

I dismiss this claim of \$2600, without leave to reapply. This request was based on the December 13, 2023, Decision. Per the May 3 Decision, the matters relating to the December 13, 2023 Decision have been conclusively dealt with, as previously mentioned in this Decision.

Are the Tenants entitled to an order for repairs to the rental unit?

I find an order for repairs relates to an ongoing tenancy. The tenancy is ending, by way of an order of possession being granted to the Landlord.

For the above reasons, the Tenants' 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.

Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

I find an order for suspending or setting conditions on the Landlord's right to enter the rental unit relates to an ongoing tenancy. The tenancy is ending, by way of an order of possession being granted to the Landlord.

For this reason, the Tenants' application for this order is dismissed, without leave to reapply.

Are the Tenants entitled to an order authorizing a change to the locks to the rental unit?

I find an order authorizing a change in locks relates to an ongoing tenancy. The tenancy is ending, by way of an order of possession being granted to the Landlord.

For this reason, the Tenants' application for this order is dismissed, without leave to reapply.

Are the Tenants entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

I find an order requiring the Landlord to comply with the Act, tenancy agreement, or Regulation relates to an ongoing tenancy. The tenancy is ending, by way of an order of possession being granted to the Landlord.

For this reason, the Tenants' application for this order is dismissed, without leave to reapply.

Filing fee

The Tenants' application was not successful, and I dismiss the request to recover the filing fee, without leave to reapply.

Landlord's two applications

As to the Landlord's request for an order of possession based on the One Month Notice, I find this issue is moot as I have ordered the tenancy ended pursuant to the 10 Day Notice. I decline to consider the Landlord's application for this reason.

As I have granted the Landlord's application for an order of possession of the rental unit, I grant the Landlord a monetary order in the amount of \$100 for recovery of one filing fee. The Landlord could have amended their application to include their claim in their second application, for an order of possession of the rental unit based upon the One Month Notice, and not file a separate application.

If the Landlord chooses, they may deduct \$100 from the Tenants' security deposit in satisfaction of this monetary award. In that case, the monetary order becomes null and void, and no longer enforceable.

Conclusion

The Tenants' application is dismissed, without leave to reapply for the reasons set out above.

The Landlords are granted an order of possession of the rental unit effective at 1:00 pm on September 30, 2024.

The Landlords are granted a monetary order of \$100, for recovery of one filing fee, which they may fulfill by deducting \$100 from the Tenants' security deposit if they choose.

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: September 07, 2024

Residential Tenancy Branch