



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes

Primary file: CNC, MNDCT, LRE, OLC

Secondary file: CNR, LRE

Introduction

This hearing dealt with two applications by the Tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") pursuant to section 46;
- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement pursuant to section 67 of the Act;
- An order to restrict or suspend the Landlord's right of entry pursuant to section 70;
- An order requiring the Landlord to comply with the Act pursuant to section 62;

Service of Proceeding Package and Evidence

The Landlord acknowledged service of the Proceeding Package but testified that the Tenant's evidence was received by email the day of the hearing.

The Tenant acknowledged they sent the evidence to the Landlord the day of the hearing by email.

As the Tenant's evidence was not served in compliance with the Act, I will not consider the evidence in my Decision.

Preliminary Issue: Application by Tenant for Adjournment

The Tenant requested an adjournment for two months to allow more time to prepare for the hearing.

In support of his application, the Tenant testified as follows.

1. The Tenant did not have time to prepare for the hearing which was scheduled sooner than anticipated. The Tenant has experienced loss of employment, harassment at the hands of the Landlord, and considerable stress hampering her ability to adequately prepare for the hearing.
2. The Tenant had applied for documents from the Landlord under the Freedom of Information Act which would not be available for two months. The documents would support the Tenant's claim the Landlord is seeking to evict her using harassing and underhanded means.
3. The Tenant asserted that the adjournment would allow the parties the opportunity to discuss settlement.
4. The Tenant said she has no place to move to if evicted and any sudden move would be disruptive to her and her child as she is a single parent.

The Landlord objected to the Tenant's request for an adjournment and testified as follows.

1. This hearing stems from the Tenant's applications. It is the responsibility of the Tenant to prepare for their own hearing.
2. The Tenant has had ample time from the issuance of the One Month Notice (December 27, 2024) and the 10 Day Notice (January 8, 2024) to prepare for their own applications to set aside the Notices.

3. The Tenant does not want to move out and is seeking to delay the hearing without valid reason.
4. The Freedom of Information Act requests are not relevant to this hearing. The Landlord has not treated the Tenant in a harassing or underhanded manner. The Landlord does not have any documents that would support the Tenant's claims.
5. The 10 Day Notice was issued because the Tenant did not pay rent due January 1, 2025. The One Month Notice was issued because the Tenant had more pets than allowed in the tenancy agreement. These are straightforward Notices to end a tenancy.
6. The Landlord has not received any rent since December 1, 2024. The Tenant said during the hearing that she is unable to pay rent due February 1, 2025. An adjournment would prejudice the Landlord by adding more outstanding rent.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides guidance on the criteria for granting an adjournment.

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Rule 7.9 states that arbitrator will consider the following when considering a party's request for an adjournment:

- the oral or written submissions of the parties.
- the likelihood of the adjournment resulting in a resolution.
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment.
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Decision

I have considered the submissions of the parties and the above criteria.

Based on the parties' testimony, I find that the evidence does not support the Tenant's need for more time to prepare. The Tenant did not explain why she could not prepare since the Notices were issued December 27, 2024 and January 8, 2024. The Tenant had ample time to prepare for the hearing and did not provide convincing evidence of efforts to obtain unavailable relevant evidence. The Tenant had ample time to prepare to present their case.

I find it unlikely that the adjournment would result in a resolution.

I believe the Tenant's primary motivation in seeking the adjournment is to avoid having to move out.

I also find the Landlord would be prejudiced by an adjournment as the Landlord has not received any rent from the Tenant since December 1, 2024.

Accordingly, I dismiss the Tenant's application for an adjournment.

Preliminary Issue: Severance

Section 2.3 of the Rules of Procedure states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the issues before me at the start of the hearing, I determined that the most pressing and related issue before me deal with whether the tenancy continues.

As a result, I exercise my discretion to dismiss, with leave to reapply, the applications by the Tenant under sections 62, 67 and 70.

The only issues before me are the applications by Tenant to cancel the 10 Day Notice and the One Month Notice.

Issue(s) to be Decided

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

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.

Tenancy

The parties agreed the tenancy began June 1, 2024. Rent is \$2,400.00 monthly payable on the first of the month. The Tenant provided a security deposit and a pet deposit each in the amount of \$1,200.00 which the Landlord holds. The Landlord submitted a copy of the tenancy agreement.

One Month Notice

The parties agreed as follows:

1. The Landlord permitted the Tenant to have two pets.
2. The Landlord sent the Tenant emails on September 24 and October 11, 2024 inquiring about the number of pets the Tenant had.
3. The Landlord sent the Tenant a letter stating she was in breach of the tenancy agreement by having more pets than permitted under the tenancy agreement. The letter required the Tenant to rectify the situation by December 20, 2024.
4. On December 10, 2024, the Tenant had four cats.
5. The Tenant did not comply with the Landlord's demand that she reduce the number of pets in her unit to the allowed number by December 20, 2024.
6. The Landlord issued a One Month Notice dated December 27, 2024. The Tenant acknowledged service. The Landlord acknowledged the Tenant applied to dispute the One Month Notice within the allowed time on January 6, 2025.
7. The One Month Notice is in the standard RTB form and states the Tenant is in breach of a material term of the tenancy. The Notice states in part:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The tenant has kept more pets than allowed under the written agreement and has attempted to conceal this violation. An email was sent to the tenant on September 24 and again on October 11 inquiring about the number of pets in the unit after multiple complaints were received from other tenants in the building. These complaints mentioned a large number of pets and litter odor emanating from the unit. Despite these communications, the tenant failed to respond to the concerns. During the unit's condition inspection, the tenant verbally implied that the number of pets was within the allowed limit. However, it has since come to light that the tenant is housing more pets than permitted. In response, an official breach letter was issued on December 13, requiring the tenant to rectify the situation by December 20. The tenant did not comply with this directive and hence the request to end tenancy for breach of material terms of the agreement.

The Landlord testified they do not know how many pets the Tenant has now. They requested an Order of Possession for breach of a material term.

The Tenant testified she removed all pets from her unit on January 8, 2025. She requested the One Month Notice be cancelled.

10 Day Notice

The parties agreed as follows:

1. The Tenant did not pay rent due January 1, 2025 in the amount of \$2,400.00.
2. The Tenant has not made any payment on outstanding rent owing to the Landlord of \$2,400.00.
3. The Tenant owes the Landlord \$2,400.00 in outstanding rent.
4. The Landlord issued a 10 Day Notice in the standard RTB form on January 8, 2025, a copy of which was submitted.
5. The Tenant acknowledged service of the 10 Day Notice.
6. The Tenant applied to dispute the 10 Day Notice on January 13, 2025 within five days after service.

The Landlord requested an Order of Possession effective as soon as possible and a Monetary Order for \$2,400.00 for outstanding rent.

The Tenant stated she had lost her job, was struggling financially but expected to be able to pay the rent soon, although she was unable to specify a date.

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. The onus to prove their case is on the person making the claim.

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

The Landlord submitted a comprehensive evidence package establishing the issuance of the Notices, service, and the amount of arrears.

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 does not pay the arrears or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I accept the parties' evidence that the Landlord issued a 10 Day Notice on January 8, 2025 which was duly served to the Tenant and the Tenant applied to dispute the Notice within the time allowed.

I find the 10 Day Notice complied with section 51 of the Act as to form and content.

The parties agreed the Tenant has not paid the amount of rent claimed owing and \$2,400.00 in outstanding rent is now owing by the Tenant to the Landlord.

A tenant is required to pay rent when due. Section 26(1) states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not provide a lawful reason for failure to pay the rent when due. The Tenant's explanation for why they did not pay rent is not justification under the Act for failure to pay.

Based upon the evidence and testimony, including the acknowledgment by the Tenant of the amount owing, I find the Landlord has met the burden of proof on a balance of probabilities that the Tenant owes \$2,400.00 to the Landlord for outstanding rent as claimed.

I find the Tenant is in breach of section 26 of the Act by not paying the amount claimed by the Landlord in accordance with the tenancy agreement.

Therefore, 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.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and I have dismissed the Tenant's application, I must grant the Landlord an Order of Possession.

Thus, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act, effective seven days after service on the Tenant. This Order of Possession may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to section 55 (1)(1.1) I must grant an award for outstanding rent which I find is \$2,400.00. I grant the Landlord an award in this amount.

As I have issued an Order of Possession under the 10 Day Notice, I will not consider the Tenant's application to cancel the One Month Notice and the Landlord's request for an Order of Possession under that Notice.

Conclusion

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.

I grant the Landlord an Order of Possession effective seven days after service on the Tenant.

This Order of Possession may be filed and enforced in the BCSC. The Landlord must serve the Tenant with this Order as soon as possible.

I grant the Landlord a Monetary Order for outstanding rent in the amount of \$2,400.00. 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. In

The remainder of the Tenant's claims are dismissed with 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: January 30, 2025

Residential Tenancy Branch