



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes Tenant: CNR, MNDCT, DRI, PSF, LAT
Landlord: OPR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 30, 2025. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlord (agent of) confirmed receipt of the Tenant’s Notice of Dispute Resolution Proceeding and evidence package and did not take issue with the service of these documents. I find the Tenant sufficiently served this above noted package for the purposes of this proceeding.

The Tenant confirmed receipt of the Landlord’s Notice of Dispute Resolution Proceeding and evidence package. No service issues were raised. I find this package was sufficiently served.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of 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 both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the 10 Day Notice.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled;

Since the Landlord confirmed he did not wish to obtain a monetary order alongside the order of possession, I will not make any monetary orders, and will focus on whether or not there are sufficient grounds to end the tenancy by way of the 10 Day Notice.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,534.00 was to be paid on the first of each month as per the verbal tenancy agreement that is in place.

The Landlord explained that they had a hearing in September 2024, regarding a 1 month notice for cause, and the Tenant never paid any rent for that month at all. The Landlord stated that the Tenant paid October, November, and December rent, in full, and paid nothing for January 2025, even after the 10 Day Notice was issued.

The Landlord provided a copy of the 10 Day Notice into evidence, which the Tenant confirmed receiving on January 3, 2025. It shows that as of January 1, 2025, the Tenant owed \$3,068.00 in unpaid rent.

The Tenant explained that he is currently dealing with the Landlord in Civil Court and the Tenant feels harassed by the Landlord and his agents. The Tenant explained that the Landlord is being vindictive by giving him rent increases when other Tenants do not

get rent increases. The Tenant acknowledged that the rent increases were on the appropriate form, but he does not feel it is equitable because no one else got them. The Tenant did not dispute that he failed to pay September rent, or January rent, and said he has the money. The Tenant feels the Landlord should have to pay him in the form of a rent reduction for painting the bathroom, and for all his time and energy he spent on dealing with the alleged misconduct from the Landlord/agent.

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 was received by the Tenant on January 3, 2025. I have considered that the Tenant feels he is owed a rent reduction and that he is not happy with his rent increase. However, I find there is insufficient evidence to show he had any legal basis under the *Act* to withhold rent. Although an unlawful rent increase could potentially lead to a rent overpayment, and a lawful reason to withhold rent, the Tenant acknowledged that the rent increase was on the appropriate form, and he was mainly focused on the fact that other Tenant's in the building were not given the rent increase, only he was after things became contentious. I am not satisfied that there was an unlawful rent increase, such that the Tenant had a legal basis to withhold rent. Furthermore, I am also not satisfied that any potential rent overpayment comes anywhere close to the amount of rent outstanding.

I find that rent was not paid when due on September 1, 2024, and January 1, 2025. I am satisfied that there was \$3,068.00 owing at the time the 10 Day Notice was issued on January 3, 2025. Since no payments were made following the issuance of the Notice, and since I find there is insufficient evidence the Tenant had any legal basis under the *Act* to withhold rent, I find that the Tenant's Application is dismissed.

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.

Since the Landlord did not want a monetary order, I decline to award the \$100 filing fee paid by the Landlord, and I decline to award the recovery of the filing fee to the Tenant as he was not successful.

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.

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