



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNLU, DRI, OLC, FFT, CNR, CNOP, CNMN, FFT

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property (Four Month Notice) under section 49 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and,

- 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant J.B. attended the hearing for the Tenant.

Landlord S.S. and Landlord representative J.S. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord S.S. was served on December 1, 2024, by pre-agreed email in accordance with section 89(1) of the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Issue – 10 Day Notice

At the outset of the hearing, it was noted that the 10 Day Notice indicated in error that the address to be vacated was the Landlord's address rather than the address occupied by the Tenant. The Tenant indicated that he understood that the 10 Day Notice served to him by the Landlord was for the property he is currently renting.

As the Tenant indicated that he understood that the notice was intended to evict him from the property he is currently renting and residing in and has made an application to dispute said notice, I find that the Tenant knew or should have known the information was omitted from the notice and that, pursuant to section 68(1) of the Act, it is reasonable to amend the notice to reflect the correct address to be vacated.

Issues to be Decided

1. Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
2. Should the Landlord's Four Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?
4. Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?
5. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

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.

Evidence was provided showing that this tenancy began on February 1, 2019, with a monthly rent of \$1,100.00, due on the first day of the month, with a security deposit in the amount of \$550.00 and a pet deposit which was repaid to the Tenant in 2022.

According to the Landlord, a 10 Day notice was served on December 3, 2024, by posting it to the Tenant's door for unpaid rent for December 2024, in the amount of \$1,397.00. A copy of the notice was submitted as evidence.

Both parties agreed that the Tenant has not paid rent for December 2024 or January 2025.

The Tenant testified that the Landlord had put pressure on him in 2022 to agree to an illegal rent increase to \$1,350.00 effective October 1, 2022, and that he had only agreed to the increase because he felt that he would be evicted if he did not. He further testified that in return for agreeing to sign a lease at the increased amount, he requested that the Landlord include a clause that stated that the Landlord could not evict him for family use and the Landlord agreed and the tenancy agreement was signed accordingly. Copies of text messages between the parties discussing the increase and the tenancy agreement addendum were submitted as evidence.

The Tenant testified that the relationship went well for the next 2 years and that he was happy with the arrangement and that the Landlord's next increase to \$1,397.00 was done legally. He stated that he stopped paying his rent on December 1, 2024, because the Landlord had not upheld his end of their agreement by serving him with a Four Month Notice to End Tenancy For Landlord Use and therefore he felt that if the Landlord was not going to stick to his end of the agreement and not to evict him for family use, he was not going to stick to his agreement to pay the rent increase from \$1,100.00 and would apply the overpaid rent to date against the current rent due. A copy of the notice was submitted as evidence.

Analysis

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

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(s) do 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 find that the 10 Day Notice was duly served to the Tenant on December 3, 2024, and that the Tenant had until December 8, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

A tenant must pay all of the rent when it's due. However, there are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

Section 43 of the Act states:

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

I find, based on the testimony of the parties, the evidence submitted and on a balance of probabilities that the Tenant and Landlord together discussed a potential rent increase above the prescribed limit and that the Tenant was not pressured or otherwise coerced into accepting, that he agreed to it in writing and that both parties were satisfied with the new tenancy agreement for more than two years. I further find that the subsequent rent increase was also in accordance with the Act and not objected to by the Tenant.

Section 26 of the Act is clear, 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.

While I understand the Tenant's reliance on section 43(5) of the Act which states, "if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase", I find that the Tenant has failed to prove that the increase was illegal and that he was therefore entitled under the Act to withhold his December 2024 rental payment.

I find that the Tenant did not pay his December 2024 rent by December 8, 2024, and therefore the notice was valid.

For the above reasons, 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.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Based on the length of the tenancy, the conditions in the rental market and on the fact that the Landlord is being awarded compensation for the entire month of January 2025, I set the effective date at 1 pm on January 31, 2025.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

I find that the Landlord is entitled to compensation for unpaid rent for December 2024 and January 2025 in the amount of \$2,794.00. Under section 38(4) of the Act, I authorize the Landlord to retain the Tenant's security deposit in the amount of \$575.99, including interest, in partial satisfaction of the monetary award.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,218.01.

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

As the tenancy has ended based on a 10 Day Notice with an effective date earlier than the effective date of the Four Month Notice, this matter was not heard and is no longer relevant.

For the above reason, the Tenant's application for cancellation of the Landlord's Four Month Notice to End Tenancy for Landlord Use (Four Month Notice) under sections 49 and 55 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act and an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

At the outset of the hearing, these matters were severed as not related to the primary issues, specifically the notices to end tenancy. After additional testimony from the Tenant and the Landlord was heard, however, I found that these matters were directly related to the 10 Day Notice and the Tenant's rationale for withholding rent.

As I have already found that the Landlord did not illegally increase the rent in my decision above, the Tenant's request for compensation for an illegal rent increase and an order for the Landlord to comply with the Act is dismissed without leave to reapply.

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on January 31, 2025, after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a Monetary Order in the amount of **\$2,218.01** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$2,794.00
authorization to retain the Tenant's security deposit in partial satisfaction of the monetary award under section 38 of the Act	-\$575.99
Total Amount	\$2,218.01

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia

(Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Tenants' application is dismissed in its entirety, without 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 06, 2025

Residential Tenancy Branch