



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR, MNRT, MNDCT, RR, DRI-ARI-C, RP, PSF, LRE, OLC,
OPR-DR, MNR-DR, FFL

Introduction

This hearing was re-convened after the issuance of a January 17, 2025, interim decision and dealt with the Tenant and Landlord Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Tenant applied 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
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order regarding the Tenant's dispute of an additional rent increase for capital expenditures by the Landlord under sections 43(3) and 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenant D.O. and Tenant support A.D. attended the hearing for the Tenant.

Landlord counsel A.E. and counsel support S.B. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord A.M. was not served notice of the hearing in accordance with section 89 of the Act. Landlord counsel testified that the Landlord was notified of the proceedings by the Residential Tenancy Branch however and therefore considered themselves to be sufficiently served for the purpose of the Act.

I find that Tenant D.O. was served on January 7, 2025, by email and courier, in accordance with section 89 of the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act. The Landlord's counsel indicated that the Landlord did not object to consideration of the Tenant's evidence.

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 Matter - Jurisdiction

At the outset of the previous hearing, it was noted that both parties had indicated on their written submissions that a previous decision rendered on September 9, 2024, by an adjudicator and which resulted in the granting of an Order of Possession and Monetary Order to the Landlord, based on a 10 Day Notice to End Tenancy For Unpaid Rent, was before the Supreme Court of British Columbia (Supreme Court).

The hearing was adjourned, and both parties were ordered to submit a copy of the Supreme Court stay order and/or the decision of the Supreme Court if a judgment had in fact been rendered so that a determination could be made as to whether or not the matter regarding unpaid rent identified on the 10 Day Notice issued December 9, 2024, is substantially linked to a matter that is before the Supreme Court.

The Landlord submitted the documents as directed.

Based on the documents submitted, I find that the matter before me regarding the December 9, 2024, 10 Day Notice is not substantially link to a matter before the Supreme Court and therefore I have jurisdiction to hear it.

I find however, that as the Supreme Court has ordered that the matter of unpaid rent for August 2024, resulting in the decision on September 9, 2024, granting an Order of Possession and Monetary Order to the Landlord, based on an August 19, 2024, 10 Day Notice to End Tenancy For Unpaid Rent be referred back to the Residential Tenancy Branch for a hearing, only claims for unpaid rent from September 1, 2024 onwards will be considered.

Preliminary Matter – Severing

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the Landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the Tenant's application were not related and would be dismissed with or without leave to reapply.

The following issues are hereby dismissed with leave to reapply:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order regarding the Tenant's dispute of an additional rent increase for capital expenditures by the Landlord under sections 43(3) and 67 of the Act

The following issues are hereby dismissed without leave to reapply:

- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Preliminary Matter - Amendments

During the hearing, Landlord counsel A.E. requested an amendment be granted allowing the Landlord to increase his claim for unpaid rent for January 2025.

I find that it could be reasonably anticipated by the Tenant that the Landlord would seek to increase the amount sought as compensation for unpaid rent and I allowed the Landlord to amend his claim to include rent for January 2025 in accordance with section 64(3)(c) of the Act and rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

Further to this and in keeping with my decision above to exclude the unpaid rent for August 2024 from consideration, I amend the amount indicated on Landlord's December 9, 2024, 10 Day Notice from \$13,000.00 to \$10,400.00 under section 68 of the Act.

Issues to be Decided

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

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

Is the Landlord entitled to recover the filing fee for this application from the Tenant 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.

Testimony and evidence were provided indicating that this tenancy began on December 21, 2023, with a monthly rent of \$2,400.00, due on the first day of the month. No security deposit was paid. The Tenant's current rent, and rent throughout the period in question, is \$2,600.00.

According to Landlord counsel A.E., a 10 Day Notice was posted on the Tenant's door on December 9, 2024, for unpaid rent for September, October, November and December of 2024, in the amount of \$13,000.00 (now amended to \$10,400.00). He testified that the Tenant has not paid the outstanding rent to date and has also not paid his January 2025 rent. A copy of the notice was submitted as evidence.

The Tenant did not dispute that he had not paid some months of rent, including December 2024 and January 2025, but testified that he could not say either way if he did or did not pay any rent at all during the entire period claimed. He testified that he withheld rent because of the Landlord had not fixed his heating issue and for some other matters that he felt the Landlord was not addressing. He testified that he could not identify under what legal authority he withheld his rent and confirmed that he did not file for dispute resolution and therefore did not receive authorization from an arbitrator to withhold his rent.

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 9, 2024, and that the Tenant had until December 14, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears.

I find, based on the testimony provided, the evidence submitted and on a balance of probabilities, that the Tenant did not pay his rent for September, October, November and December 2024, and therefore the notice was valid. I find that the Tenant's testimony that he could not say whether or not he had paid any of his rent during the period in question to lack credibility. I further find that the Tenant also did not pay his January 2025 rent.

Section 26 of the Act states:

26 (1) 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.

I find that the Tenant did not have legal authority to withhold his rent.

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.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$13,000.00 for the rental period September 1, 2024, to January 31, 2025.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is granted.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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 **\$13,100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$13,000.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$13,100.00

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 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.

The Tenant's application for a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act is dismissed, with leave to reapply.

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, with leave to reapply.

The Tenant's application for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is dismissed, with leave to reapply.

The Tenant's application for an order regarding the Tenant's dispute of an additional rent increase for capital expenditures by the Landlord under sections 43(3) and 67 of the Act is dismissed, with leave to reapply.

The Tenant's 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. The Tenant's application for an order for the Landlord to provide services or facilities required by law under section 27 of the Act is dismissed, without leave to reapply.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, 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 31, 2025

Residential Tenancy Branch