



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, LRE, OLC, RR, FFT

Introduction

This was a cross application hearing that dealt with the tenant's two applications. The first application for dispute resolution was made pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order for regular repairs, pursuant to section 32;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties agree that the tenant personally served the landlord with the first application for dispute resolution on November 15, 2020. I find that the landlord was served with the first application in accordance with section 89 of the *Act*.

The second application for dispute resolution was made pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and

- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant testified that the landlord was not served with the second application for dispute resolution but may have received it by email. No emails serving the landlord were entered into evidence. The landlord testified that she was not served with the tenant's second application.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find that the tenant did not serve the landlord with the second application in a manner required by section 89(1) of the *Act*. I therefore dismiss the second application with leave to reapply.

Preliminary Issue- Section 55 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or any of the landlord's notices to end tenancy are upheld and the landlord has issued notices to end tenancy that comply with the *Act*.

Preliminary Issue- Severance

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.

It is my determination that the priority claims regarding the Notices to End Tenancy and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss with leave to reapply, the tenant's claims for:

- an Order for regular repairs, pursuant to section 32; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application to cancel either Notice to End Tenancy is dismissed or either of the landlord's Notices to End Tenancy are upheld, and the Notices to End Tenancy comply with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2020 and is currently ongoing. Monthly rent in the amount of \$985.00 is payable on the first day of each month.

The landlord testified that a 10 Day Notice for Unpaid Rent was posted on the tenant's door on November 15, 2020. The tenant testified that she received the 10 Day Notice on November 15, 2020. The tenant filed to dispute the 10 Day Notice on November 19, 2020. Both parties agree that the tenant has not paid rent for November and December of 2020 and has not paid rent for January 2021.

Both parties agree that the landlord posted a One Month Notice to End Tenancy for Cause on October 22, 2020. The tenant testified that she received the One Month Notice on October 22, 2020. The One Month Notice was entered into evidence and has an effective date of November 30, 2020.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord testified that the tenant has received numerous complaints from the tenant's co-tenant and from the tenant who resides in the unit above the tenant. The landlord testified that the tenant verbally attacks herself and other tenants. The tenant testified that the verbal exchanges between herself, other tenants and the landlord are the result of escalations on both sides of the exchanges and because the landlord has not completed necessary repairs. The landlord testified that she has responded appropriately to the tenant's requests for repairs.

Analysis

I find that the 10 Day Notice was served in accordance with section 88 of the *Act*. I find that the 10 Day Notice meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the testimony of both parties, I find that the tenant failed to pay the overdue rent within five days of receiving the 10 Day Notice. I therefore uphold the 10 Day Notice. I note that the tenant's application to cancel the 10 Day Notice was dismissed earlier in this decision.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the 10 Day Notice complies with section 52 of the *Act*, the tenant's application to cancel the 10 Day Notice was dismissed and the landlord's 10 Day Notice was upheld, the landlord is entitled to a two-day Order of Possession pursuant to section 55 of the *Act*.

As I have determined that this tenancy has ended pursuant to the 10 Day Notice, I decline to consider if this tenancy will end pursuant to the One Month Notice.

I decline to award the tenant the recovery of the filing fee for this application, pursuant to section 72 of the *Act*, as the tenant was not successful in this application.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 21, 2021

Residential Tenancy Branch