



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL, CNR, RR, MNDCT, OLC, RP, PSF, FFT

Introduction

This hearing dealt with 5 applications from both the landlord and the tenant under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agents (the landlord) and the tenant attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence in person. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Extensive discussions with both parties resulted in the tenant's application for dispute being clarified.

The tenant has made requests in all 4 of the applications filed for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72

The tenant clarified that each of the 4 applications contains a request to cancel a different 10 Day Notice and the remaining requests were the same in each for all files. The tenant stated that the requests were related to the loss of use of parts of the tenancy forcing him to be unable to rent out rooms; to make repairs to the dryer, stove fan, a door latch and drain covers. The tenant confirmed that these requests were unrelated to the 10 Day Notice(s) for unpaid rent. RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss,

for an order for the landlord to comply with the Act, for an order for the landlord to make repairs and for an order for the landlord to provide services or facilities. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice(s) to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply. The tenant's request to cancel the 4 separate 10 Day Notice(s) shall proceed.

The tenant is disputing the landlord's 4 separate notice(s) to end tenancy for unpaid rent dated April 9, 2021, May 13, 2021, June 17, 2021 and July 13, 2021 and recovery of the filing fee(s). The landlord stated that he is cancelling all 4 of these notice(s) and wishes to only proceed on the 10 Day Notice dated June 8, 2021. On this basis, I find that the tenant has been successful in his 4 application(s) for dispute and is entitled to recovery of his \$100.00 filing fee(s) for each of the 4 files. The tenant is granted a monetary order for \$400.00.

The hearing shall proceed on the landlord's application for dispute.

After 82 minutes the hearing was adjourned due to a lack of time. Both parties were advised that they would receive with the interim decision a notice of adjournment detailing the continuation date and the necessary access codes. Both parties were also directed that no new evidence was to be submitted nor would it be accepted.

On September 9, 2021 the hearing resumed with both parties were present, made submissions and presented evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice for Unpaid Rent dated June 8, 2021. The 10 Day Notice sets out an effective end of

tenancy date of June 23, 2021 and states that the tenant failed to pay rent of \$12,975.00 that was due on June 1, 2021.

The landlord claims that the tenant failed to pay rent and continues to not pay any rent. The landlord clarified that the tenant failed to pay monthly rent of \$3,995.00 for the 4 month period March to June 2021. The landlord also noted that the tenant had a \$5.00 credit from February 2021 which was applied to the March 2021 balance. The landlord also stated that the tenant had made a partial payment of \$3,000.00 on March 18, 2021.

\$3,995.00	March 2021 Unpaid Rent
-\$5.00	Credit from February 2021
\$3,995.00	April 2021 Unpaid Rent
\$3,995.00	May 2021 Unpaid Rent
\$3,995.00	June 2021 Unpaid Rent
\$15, 975.00	Total
-\$3,000.00	Partial Payment, March 18, 2021
\$12,975.00	Total Unpaid Rent for 10 Day Notice dated June 8, 2021

The landlord also claims that since the 10 Day Notice was served on June 8, 2021, no rent payments have been made by the tenant. The landlord also seeks ongoing monthly unpaid rent of \$3,995.00 for July and August 2021 for an additional \$7,990.00. The landlord stated that as of the date of this hearing the tenant is in arrears for \$24,960.00 which includes September 2021. The tenant confirmed that he received the 10 Day Notice and that he has not paid any rent as claimed by the landlord. The tenant repeatedly stated that he would not pay for something that he did not receive. The tenant argued that he has many issues with the landlord misrepresenting the rental premises and its condition. The tenant repeatedly argued that the rental unit was substandard preventing him from re-renting the rooms to others. The tenant confirmed that he did not have permission from the landlord to withhold rent nor the Residential Tenancy Branch.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence of both parties that the landlord served the tenant with the 10 Day Notice dated June 8, 2021 by Canada Post Registered Mail on June 8, 2021. I find that the tenant was properly served with the 10 Day Notice dated June 8, 2021.

The landlord provided undisputed affirmed evidence that the tenant failed to pay rent and that as of the date of this hearing the tenant is in rental arrears of \$24,960.00. The tenant stated that he was not sure of the exact amount but can confirm that no rent has been paid since the 10 Day Notice dated June 8, 2021 was served.

Based upon the above evidence of both parties, I find that the landlord was established a claim for unpaid rent based upon the 10 Day Notice dated June 8, 2021. As such, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

The tenant stated that he did not have permission from the landlord to withhold rent. The tenant stated that he did not have an order from the Residential Tenancy Branch authorizing him to withhold the rent.

Section 26 of the Residential Tenancy Act states in part,

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

On the landlord's monetary claim, I find that with the undisputed affirmed evidence of the landlord that there is unpaid rental arrears totalling \$24,960.00. Despite the tenant's repeated arguments, the tenant confirmed in his direct testimony that he did not pay the rent as claimed by the landlord due to issues he was having with the condition of the rental unit. The tenant also confirmed that he did not have the consent of the landlord to withhold the rent nor does the tenant have authorization from the Residential Tenancy Branch to withhold the rent.

The landlord is also entitled to recovery of the \$100.00 filing fee.

In offsetting these claims, I order that the landlord's monetary claim deduct the \$400.00 awarded to the tenant in being successful in his applications for dispute.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$24,660.00.

These orders must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: September 9, 2021

Residential Tenancy Branch