



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Landlord	310048237, 310053366	OPM, OPR-DR, MNR-DR, FFL
Tenant	310048461	CNR, RR, MNDCT, OLC

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord filed claims for:

- an Order of Possession for a mutual agreement to end tenancy dated August 4, 2021;
- an order of possession for unpaid rent, further to having served a 10 Day Notice dated October 12, 2021 (“10 Day Notice”);
- a request for a monetary order of \$3,640.00 for outstanding unpaid rent; and
- recovery of the \$100.00 application filing fee.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice;
- a monetary order for damage or compensation under the Act of \$525.00;
- an Order to reduce the rent by \$875.00 for repairs, services or facilities agreed upon, but not provided; and
- an Order for the Landlord to Comply with the Act or tenancy agreement.

The Tenant, D.D., the Landlord, M.L., and the Landlord’s husband, B.X. appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide

their evidence orally and respond to the testimony of the other Party and to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a 10 Day Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant’s request to set aside the 10 Day Notice at this proceeding. Therefore, the Tenant’s other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2020, with a monthly rent of \$1,950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,023.00, and no pet damage deposit. The Landlord submitted a copy of the 10 Day Notice, which was signed and dated

October 12, 2021, and which has the rental unit address. It was served via registered mail on October 13, 2021, with an effective vacancy date of October 29, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$1,690.00 when it was due on October 1, 2021. I note that the Landlord wrote on the 10 Day Notice that rent received is for use and occupation only, as she said the Parties signed a Mutual Agreement to End the Tenancy on August 4, 2021, which the 10 Day Notice does not invalidate.

In the hearing, the Landlord said that the Tenant has continued to fail to pay rent and that he now owes the Landlord rent for August 2021 through and including January 2022, for a total of \$11,700.00. The Landlord requested that her Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$3,640.00 to \$11,700.00.

The Tenant acknowledged that he has failed to pay rent as the Landlord has claimed; he said he was told that he could hold onto his rent while the arbitration process is underway. I advised the Tenant that he had been misinformed, as applying for, or responding to dispute resolution does not authorize a tenant to not pay rent. I recommended the Tenant contact the RTB for any information he needs regarding tenancies.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 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 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on October 18, 2021, five days after it was sent to him by registered mail.

Section 26 of the Act states that 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 the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that she was owed \$11,700.00 in unpaid rent as of January 1, 2022, as she said the Tenant has not paid rent since July 2021. The Tenant acknowledged that he has not paid this rent owing, as he erroneously understood that he was authorized to hold back the rent during the arbitration process.

Based on the above, I find that the amount of rent outstanding, which is listed on the 10 Day Notice of \$3,640.00 is incorrect, as it was based on outstanding rent at the time of application for dispute resolution. Further, the Landlord said the amount owing is now \$11,700.00, as the Tenant has not paid any rent since July 1, 2021. As noted above, I have amended the Application to include the amount of rent that has not been paid since the Tenant was served with the 10 Day Notice.

When I consider the 10 Day Notice, I find that it is in the approved form and is valid, pursuant to section 52 of the Act. I find that the 10 Day Notice is valid, and I confirm it.

The Tenant acknowledged that he has not paid rent in the last six months, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$11,700.00 in rent owed for August 2021 through January 2022. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenant's Application is dismissed wholly without leave to reapply.

I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence is that the Tenant has not paid rent for the last six months, the Order of Possession will be effective two days after service of the Order on the Tenant.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit, **effective two days after the Tenant receives the Order.**

The Landlord is also eligible for a monetary order for unpaid rent, pursuant to sections

26, 46, and 67 of the Act. Accordingly, I award the Landlord with \$11,700.00 from the Tenant.

The Landlord had applied for recovery of both \$100.00 filing fees for her two applications. However, the Landlord did not need to re-apply and pay a second \$100.00 filing fee; rather, she could have amended her initial claim without any charge. As such, I decline to award the Landlord with recovery of her second \$100.00 Application filing fee.

Given her success in this matter, I award the Landlord with recovery of her initial **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$1,023.00 in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$1,023.00** security deposit in partial satisfaction of the awards.

Pursuant to section 67 of the Act, I grant the Landlord a **Monetary Order** from the Tenant of **\$10,777.00**.

Conclusion

The Tenant has not paid rent for the last six months; therefore, his Application is dismissed wholly without leave to reapply, and the tenancy ends.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 26, 46, and 67 of the Act, the Landlord is granted a Monetary Order from the Tenant of **\$10,777.00** in recovery of unpaid rent. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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 17, 2022

Residential Tenancy Branch