



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, MNDCT, RP, FFT

Landlord: OPR, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated July 12, 2022 (the "10 Day Notice") pursuant to section 46;
- a Monetary Order of \$5,500.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the Tenant's filing fee from the Landlord pursuant to section 72.

This hearing also dealt with the Landlord's cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to sections 46 and 55;
- a Monetary Order of \$5,500.00 for compensation for monetary loss or other money owed pursuant to section 67;
- a Monetary Order of \$5,500.00 for unpaid rent pursuant to sections 26 and 67;
- to retain the security and/or pet damage deposit pursuant to section 72; and
- authorization to recover the Landlord's filing fee from the Tenant pursuant to section 72.

The Landlord's agent AH attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Tenant to call into the hearing scheduled

to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that AH and I were the only ones who had called into the hearing.

I informed AH that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Style of Cause

This application initially included two other tenant-applicants, CC and VJ (full names on the cover page of this decision). AH confirmed that CC and VJ not listed as tenants on the parties’ tenancy agreement. As such, I have amended the style of cause to remove CC and VJ as parties.

Preliminary Matter – Service of Dispute Resolution Documents

AH acknowledged that the Landlord received the Tenant’s notice of dispute resolution proceeding package (the “Tenant’s NDRP Package”). Based on AH’s testimony, I find the Landlord was sufficiently served with the Tenant’s NDRP Package pursuant to section 71(2) of the Act.

AH was unable to confirm when and how the Landlord had served the Tenant with a copy of the Landlord’s notice of dispute resolution proceeding package and documentary evidence for the Landlord’s cross-application (collectively, the “Landlord’s NDRP Package”). I find that the Tenant was not served with the Landlord’s NDRP Package in accordance with sections 88 and 89 of the Act.

Rule 3.5 of the Rules of Procedure states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the Landlord was unable to establish service of the Landlord’s NDRP Package upon the Tenant, I dismiss the Landlord’s cross-application with leave to re-apply.

Preliminary Matter – Tenant's Non-Attendance

Rules 7.3 of the Rules of Procedure state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

Since the Tenant did not attend for her own application, while the Landlord's agent duly attended, I order the Tenant's claims for monetary loss or money owed by the Landlord and for recovery of the filing fee to be dismissed without leave to re-apply.

I directed that this hearing continue in the Tenant's absence to determine whether the Tenant is entitled to cancel the 10 Day Notice, and if not, whether the Landlord is entitled to an Order of Possession and Monetary Order for unpaid rent under sections 55(1) and 55(1.1) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

This tenancy commenced on February 15, 2022 for a fixed term ending on January 31, 2023. Rent is \$2,400.00 per month due on the first day of each month. The Tenant paid a security deposit of \$1,200.00 which is held by the Landlord in trust.

A copy of the 10 Day Notice has been submitted into evidence. The notice is dated July 12, 2022 and has an effective date of July 23, 2022. It states that the Tenant failed to pay "\$4,000.00" due on July 1, 2022, which was crossed out and replaced by "\$5,500.00". AH was unable to explain the breakdown for the amounts indicated on the 10 Day Notice.

AH testified that the Tenant had stopped paying rent in April 2022. AH testified that the total amount owing by the Tenant since April 2022 is \$10,600.00. AH was unable to explain how the Landlord arrived at \$10,600.00 in rent owing by the Tenant.

The Tenant's application indicates that the 10 Day Notice was received July 12, 2022.

AH testified the Tenant had stated she will not attend the hearing and will move out of the rental unit.

AH confirmed that the Tenant is still residing in the rental unit.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when due, 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

In this case, I find the Tenant received the 10 Day Notice on July 12, 2022 as stated in the Tenant's application. Records of the Residential Tenancy indicate that the Tenant applied to dispute the 10 Day Notice on July 16, 2022. I find the Tenant made this application within the 5-day deadline required under section 46(4) of the Act.

Where a tenant has applied to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the reason for ending the tenancy.

A landlord still bears the onus of proof where a tenant applies to dispute a notice to end tenancy but does not attend the hearing. In *M.B.B. v Affordable Housing Charitable Association*, 2018 BCSC 2418 at paras. 26-27, the Supreme Court of British Columbia held that an arbitrator cannot dismiss an application to cancel a notice of eviction without considering "whether the statutory grounds for the eviction have been met". The Court held that it would be "insufficient" to dismiss the application solely on the ground

that the tenant had not dialed into the hearing. The arbitrator still had to “resolve the issue raised by the application on the merits in some way”.

In the application before me, I find the Landlord was unable to explain the how the stated amount of unpaid rent on the 10 Day Notice was calculated, why it had been crossed out, and how the Landlord arrived at a total amount owing of \$10,600.00. As such, I am not satisfied that the Landlord has proven on a balance of probabilities that the Tenant owes the Landlord unpaid rent in the amounts alleged.

Accordingly, I order the 10 Day Notice to be cancelled and of no force or effect.

2. Is the Landlord entitled to an Order of Possession and Monetary Order?

As I have cancelled the 10 Day Notice, I conclude the Landlord is not entitled to an Order of Possession or Monetary Order under sections 55(1) and 55(1.1) of the Act.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

The Tenant’s claims for \$5,500.00 in monetary loss or money owed by the Landlord and for recovery of the filing fee are dismissed without leave to re-apply.

The Landlord’s cross-application is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

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: October 4, 2022

Residential Tenancy Branch