



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes CNR OLC OPU MNRL-S FFL

Introduction

The tenant seeks to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and an order for landlord compliance, pursuant to sections 46 and 62, respectively, of the *Residential Tenancy Act* (the “Act”). By way of cross-application the landlord seeks an order of possession based on the Notice along with a monetary order for unpaid rent and the filing fee.

A dispute resolution hearing was held on November 1, 2022 and in attendance were the landlord, their daughter (who acted as the landlord’s representative), two interpreters for the tenant, and the tenant (who dialed into the hearing at 9:38 AM).

Preliminary Issue: Unrelated Issue

Having reviewed the tenant’s application is it my finding that the tenant’s relief for an order for landlord compliance under section 62 of the Act is unrelated to the primary relief of an order to cancel the Notice. Pursuant to Rule 2.3 of the *Rules of Procedure*, which permits me to dismiss unrelated claims, I hereby dismiss the tenant’s claim for an order under section 62 without leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on January 26, 2022 and monthly rent, which is due on the 26th day of the month, is \$850.00. The tenant paid a \$425.00 security deposit which the landlord holds in trust. There is a written tenancy agreement (in Chinese) in evidence.

On June 10, 2022 the landlord served the Notice (a copy of which is in evidence) on the tenant. At that time, the tenant was late paying rent in the amount of \$550.00. The landlord's representative testified that the tenant never paid this and as of November 1, 2022 owes \$4,800.00 in rental arrears.

Through his interpreter the tenant testified that his business failed and thus his income changed in May 2022, essentially there was no income coming in and he was unable to pay rent beyond May. He is and has been looking for other income sources. The tenant was in the process of applying for government subsidies but according to the tenant the landlord did not help fill out a required form. In addition, the landlord apparently cut off the Wi-Fi which prevented the tenant from applying for the government subsidy online and from operating a business. Once the tenant obtains a government subsidy, he then anticipates being able to get caught up with the rent arrears.

In their brief rebuttal the landlord's representative testified that there was Wi-Fi issues in July, but these were not immediately resolved. Moreover, the restoration of the wi-fi—which was, the landlord admitted, a service provided under the tenancy agreement—not high on their list of priorities given the tenant's ongoing failure to pay rent. The landlord also noted that it is not their responsibility to assist the tenant is paying the rent.

Analysis

The standard of proof is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant disputes a notice to end a tenancy the onus to establish the reason for issuing the notice falls on the landlord.

In this dispute the Notice was issued under section 46 of the Act for the tenant's failure to pay rent as required by section 26 of the Act and by the tenancy agreement.

The tenant is required by the tenancy agreement to pay rent in the amount of \$850 on the 26th of each month. He has not done so since May 27, 2022. Further, there's no evidence before me to find that the tenant had any legal right under the Act not to pay the rent. Accordingly, the landlord exercised their legal right and issued a notice to end tenancy under section 46.

Having reviewed the Notice it is my finding that it complies with section 52 of the Act in form and content. Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they issued the Notice in compliance with the Act and for the reason that the tenant failed to pay rent.

While it is not lost on me that the tenant certainly fell on difficult times with his not-so-successful business, it is not a landlord's responsibility to assist a tenant in finding a source of income in order to pay rent. And, while the landlord ought not to have cut off Wi-Fi access, I am not persuaded that the tenant could not have found other means to access the internet.

The tenant's application for an order to dismiss the Notice is accordingly dismissed without leave to reapply and pursuant to section 55(1) of the Act the landlord is granted an order of possession of the rental unit. Further, pursuant to section 55(1.1) of the Act, as the tenant's application was in relation to the landlord's notice to end tenancy for unpaid rent, I hereby grant an order requiring the payment of the unpaid rent in the amount of \$4,800.00.

As the landlord was successful in their application, they are granted \$100.00 under section 72 of the Act to recover the cost of their application filing fee. In total the landlord is awarded \$4,900.00.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain the tenant's security deposit of \$425.00 in partial satisfaction of the amount awarded.

The balance of the award (\$4,475.00) is granted by way of a monetary order.

Both the order of possession and the monetary order are issued with this decision to the landlord. It is the landlord's responsibility to serve copies of each order upon the tenant.

Conclusion

The tenant's application is hereby DISMISSED without leave to reapply.

The landlord's application is hereby GRANTED. The landlord is granted an order of possession and a monetary order.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 2, 2022

Residential Tenancy Branch