



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNL DRI-ARI-C FFT (x 2)
OPR-DR MNR-DR FFL CNR MNDCT

Introduction

The tenant disputes two notices to end tenancy, disputes a rent increase for capital expenditures, recovery of application filing fee, and compensation, under the *Residential Tenancy Act* (the “Act”). Conversely, the landlord seeks a monetary order for unpaid rent and utilities and an order of possession.

Both parties attended the hearing and were affirmed. No issues of services arose.

It should be noted that while two tenants’ names were included in the tenant’s applications, only one of those names appears in the tenancy agreement and the notices to end tenancy. As such, the style of cause on the cover page of this decision reflects just the one tenant.

Preliminary Issue

It is noted that the tenant disputes an additional rent increase for eligible capital expenditures. There is, however, no evidence before me that the landlord ever issued a rent increase under section 23.1 of the *Residential Tenancy Regulation* for this specific type of rent increase. As such, this aspect of the tenant’s applications is dismissed without leave to reapply.

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

It is my finding that the tenant’s claim for compensation in the amount of \$12,000.00 is unrelated to the primary issue of whether the two notices to end the tenancy are valid. As such, the tenant’s claim for compensation is dismissed without leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the notices to end the tenancy?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent and utilities?
4. Is either the landlord or the landlord entitled to recover the cost of their filing fee?

Background and Evidence

The tenancy began on July 15, 2017. Monthly rent was initially \$1,550.00. It then increased to \$1,800.00. Both parties signed a tenancy agreement in which the rent was increased. The tenant testified that he “didn’t know anything” about the law at the time so he unwittingly signed the tenancy agreements. He disputes the rent increases that were implemented over the past five years.

The landlord then increased the rent over the years to \$1,874.50 after issuing notices of rent increases under the Act. Copies of the tenancy agreements are in evidence. In all versions of the tenancy agreement rent is due on the first day of the month.

The tenant paid a \$1,000.00 security deposit. While this amount is in excess of the amount permitted under the Act, the landlord has retained the entire amount in trust since 2017 and pending the outcome of this dispute.

On July 23, 2022 the landlord served a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) on the tenant by registered mail. The tenant filed an application to dispute the Notice on July 24, and neither party disputed issues of service of the Notice. A copy of the Notice is in evidence. Page two of the Notice indicates that the tenant had failed to pay rent in the amount of \$1,874.50 that was due on July 1, 2022.

The landlord testified that the tenant never paid the rent for July, paid the rent for August, didn’t pay the rent for September and October, and then paid the rent for November. In addition, the landlord testified that the tenant has not paid the utilities (which he is required to do) from June to September, inclusive. In total, the tenant owes rent and utilities arrears in the amount of \$6,516.92. The tenant did not, during his testimony, deny or otherwise dispute that he owes this amount.

While both parties also testified about a *Two Month Notice to End Tenancy for Landlord’s Use of Property* that was issued on June 30, 2022, given my findings below regarding the Notice I will not reproduce their testimony about the *Two Month* notice.

Analysis

The standard of proof in a dispute resolution hearing 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 landlord who issued a notice to end a tenancy that was disputed by the tenant.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

In this case, monthly rent is \$1,874.50 and this is due on the first day of the month. The landlord's evidence, which was not disputed by the tenant, is that the tenant did not pay the rent on July 1. They did not at any point pay the rent for July. Nor has the tenant paid rent for September and October. And they have not paid utilities for several months. On a balance of probabilities, it is my finding that the Notice was issued on a valid ground pursuant to section 46(1) of the Act.

Section 52 of the Act states that

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

Having reviewed the Notice it is my conclusion that it complies with section 52 of the Act.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the Notice be upheld and that the tenant's application to cancel the Notice be dismissed without leave to reapply.

Section 55(1) 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.

Having found that the Notice complies with section 52 of the Act, having dismissed the tenant's application to cancel the Notice, and having upheld the Notice, the landlord is granted an order of possession of the rental unit.

A copy of the order of possession is issued with this Decision to the landlord. And the landlord must serve a copy of the order of possession on the tenant. The order of possession is enforceable in the Supreme Court of British Columbia.

Section 55(1.1) of the Act states that

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

As the tenant's application is in relation to the Notice issued under section 46 of the Act, and as the circumstances referred to in subsection (1) (a) and (b) of this section apply, I hereby grant an order requiring the payment of the unpaid rent and utilities in the amount of \$6,516.92.

As the landlord was successful in upholding the Notice, they are entitled to recover the cost of the application filing fee of \$100.00. In total the landlord is awarded \$6,616.92.

Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain the \$1,000.00 security deposit in partial satisfaction of the above-noted order requiring payment.

The balance of the amount ordered, \$5,616.92, is issued in a monetary order. A monetary order is issued with this Decision to the landlord and the landlord must serve a copy of the monetary order upon the tenant. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The tenant's claims to recover the two \$100.00 application filing fees are dismissed without leave to reapply.

As an aside, while the tenant seems to dispute the rent increase that resulted in the original rent of \$1,500.00 going up to \$1,800.00, it is important to note that the tenant himself agreed, in writing, to the rent increasing from \$1,500.00 to \$1,800.00. Section 43(1)(c) of the Act permits a landlord to impose a rent increase up to whatever amount when it is "agreed to by the tenant in writing."

It can therefore be said that the tenant agreed to the increase in writing by signing the tenancy agreement setting out the rent at \$1,800.00. Claiming ignorance of the law is, with respect to the tenant, not a defense in accepting such a rent increase. The tenant had every opportunity to inform himself of the Act if he so chose but did not.

Conclusion

The tenants' applications are hereby dismissed without leave to reapply, while the landlord's application is hereby granted.

The landlord is granted an order of possession and a monetary order.

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: November 19, 2022

Residential Tenancy Branch