



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP, PSF, OLC, FFTCNL, RP, PSF, LRE, OLC, FFTCNL, RP, PSF, OLC, FFT

Introduction

This hearing was set to hear three applications filed by the tenants that were joined together. The tenants filed for several remedies, including:

- Cancellation of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”);
- Cancellation of Two Month Notices to End Tenancy for Landlord’s Use of Property (“2 Month Notice”);
- Authorization to reduce rent for repairs, services or facilities agreed upon but not provided;
- Orders for repairs;
- Orders for the landlord to provides services or facilities required by law or the tenancy agreement;
- Orders for the landlord to comply with the Act, regulations or tenancy agreement;
- Authorization to suspend or set conditions on the landlord’s restricted right to enter the rental unit;
- Monetary compensation for damages or losses under the Act, regulations or tenancy agreement; and,
- Recovery of the filing fees paid for these applications.

One of the co-tenants appeared at the hearing, along with legal representation. The landlord was represented by a property manager.

The hearing commenced on January 27, 2023 and on that date I dealt with procedural and preliminary matters and heard from both parties with respect to the 2 Month Notices. I issued an Interim Decision on February 1, 2023. As seen in the Interim

Decision, one of the 2 Month Notices was withdrawn and I cancelled the other 2 Month Notice. I also put the parties were put on notice that I would be dealing with the 10 Day Notices when the hearing reconvened.

During the allotted hearing time set for the reconvened hearing, I heard from both parties with respect to the 10 Day Notices. For reasons provided in this written decision, I have concluded that the tenancy is at an end due to unpaid rent. As such, I find the other remedies sought by the tenants in these applications to be largely moot with the exception of the tenants' monetary claim.

As for the tenants' monetary claim, I did not hear it and I make no findings as to the tenants' entitlement to compensation from the landlord. The tenants had attempted to amend the monetary claim by way of an Amendment sent to the landlord's property manager on January 13, 2023. The Amendment was served late and as seen in the Interim Decision, the only issue added to the original applications by consent was the tenants' request to dispute the 10 Day Notice dated January 9, 2023.

Since the amended monetary claim was not accepted, I sever the tenant's monetary claim and dismiss it with leave to reapply pursuant to the discretion afforded me under Rules 2.3 and 6.2 of the rules of Procedure, which provide as follows:

2.3 Related issues

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.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Issue(s) to be Decided

1. Should the 10 Day Notice(s) be upheld or cancelled?
2. If the 10 Day Notice(s) is/are upheld, is the landlord entitled to an Order of Possession and Monetary Order pursuant to section 55(1) and (1.1) of the Act?

3. Award of the filing fees.

Background and Evidence

The tenants entered into a written tenancy agreement with a former landlord starting September 15, 2012 and paid a security deposit of \$600.00. The tenants were required to pay rent of \$1200.00 on the first day of every month under the tenancy agreement.

The property was sold to new owners in 2020 and under an oral agreement the tenants began paying rent of \$1400.00 per month.

The current owners entered into a Contract of Purchase and Sale to purchase the property in May 2022 for title to transfer effective June 30, 2022. During the hearing, both parties provided consistent statements that the Land Title and Survey Authority (LTSA) still reflects the former owner as being an individual referred to by initials DD; however, the tenant's lawyer had reached out to DD and DD confirmed that the property has been sold to the current owners, and DD does not purport to have any ownership interest in the property. The landlord's agent suggested that there may be a processing delay at LTSA. All parties were of the position that the landlord named in this proceeding is an owner of the property even if LTSA records do not yet reflect that.

On September 29, 2022 the landlord, referred to by initials KS, and the tenants participated in a hearing set to hear the landlord's application for an Order of Possession. The landlord's request was dismissed, with leave to reapply, due to insufficient proof of service. In that proceeding, and as reflected in the decision issued by the Arbitrator on September 29, 2022 "The landlord confirmed that he co-owns the rental unit with the other three landlords named in this application. He said that he had permission to represent the other three landlords at this hearing (collectively "landlords")".

In filing the tenant's applications that are before me, and as amended, the tenants are seeking to dispute three 10 Day Notices:

- A 10 Day Notice issued by landlord KS on August 31, 2022 indicating rent of \$1500.00 was outstanding as of August 1, 2022;
- A 10 Day Notice issued by the landlord's former agent, referred to by initials HB, on September 12, 2022 indicating \$1500.00 was outstanding as of September 1, 2022;

- A 10 Day Notice issued on January 9, 2023 by the landlord's current property manager indicating rent of \$8400.00 was outstanding as of January 1, 2023 and a stated effective date of January 23, 2023.

The tenant's legal representative suggested the 10 Day Notice dated January 9, 2023 be dealt with first. The landlord's property manager had no objection.

The parties were in agreement that the 10 Day Notice dated January 9, 2023 was posted to the rental unit door on January 9, 2023. The tenant filed to dispute the 10 Day Notice within five days by way of the Amendment served to the property manager on January 13, 2023 and that amendment was permitted by consent.

The property manager submitted that the tenant had not paid rent for the six months of August 2022 through January 2023. As such, the amount of \$8400.00 that appears on the 10 Day Notice is calculated as \$1400.00 per month times 6 months.

After serving the tenant with the 10 Day Notice dated January 9, 2023, the property manager received the following payments from the tenant: \$1400.00 on January 10, 2023; \$200.00 on January 27, 2023; \$800.00 on February 2, 2023; and, \$400.00 on February 3, 2023. The tenant's representative agreed the property manager's records are accurate although the tenant may have actually input the payment into the rent payment portal the day before the property manager received it. The tenant also confirmed that the \$1400.00 payment made in January 2023 was intended to pay for January 2023 rent and the three subsequent payments were intended to pay for February 2023.

The property manager submitted that \$7000.00 in rent remains outstanding and the landlord seeks an Order of Possession effective at the end of February 2023 along with a Monetary Order for the outstanding rent.

Through the tenant's representative, the tenant made the following submissions, that I have recorded in summary form:

- The tenant was confused as to the identity of her new landlords as multiple persons approached her, telling her that they were the landlord, or the landlord's agent, and that she owed them rent.
- The landlord(s) did not provide her with instructions as to how to pay the rent despite receiving 10 Day Notices that included the landlord's or landlord's agent's name and service address.

- The LTSA did not show the names of the new owners although the tenant's and/or her lawyer reached out to the former owner DD who confirmed she had sold the property.
- The tenant wishes to continue the tenancy, the tenant has been agreeable to a rent increase but the landlord has intentionally made paying the rent difficult so that the tenancy will end and the landlord may re-rent the unit or more rent.
- It was not until January 9, 2023 when the tenant received the 10 Day Notice from the current property manager that she was informed how to pay rent and she proceeded to make a payment; however, she did not have the funds to pay the balance of the outstanding rent.

The tenant, through her representative, submitted that the reasons the tenant did have the funds to pay the balance of the outstanding rent was due to:

- The landlord terminated the hydro connection to the rental unit, costing the tenant \$158 to have it restored.
- The tenant's internet service was disconnected when new tenants moved into the farm house, where the router is located, in the summer of 2022 and the landlord will not provide access to the farm house so that the internet provider may install internet access for the tenant. In turn, the tenant increased her mobile data plan which has cost her an additional \$390.00 since the summer.
- The lack of a stable internet connection caused the tenant to be demoted at her place of employment resulting in loss of income of \$4000.00;
- The landlord's actions, including termination of services and multiple eviction notices and an aggressive former agent of the landlord, HB, have caused the tenant to suffer a great amount of stress, resulting in the tenant taking medical leave and loss of wages of approximately \$500.00 per month.
- Garbage removal services were terminated by the landlord, causing the tenant to have to take her garbage to the landfill at a cost of approximately \$900.00.

The tenant's representative argued that the Residential Tenancy Act is designed to protect tenants and that due to the financial losses suffered by the tenant as a result of the landlord's breaches of the Act, it is unfair to require the tenant to pay the rental arrears immediately and it is unfair to permit the landlord to benefit from an eviction by creating financial losses for the tenant. Thus, the tenant seeks cancellation of the 10 Day Notices as an equitable remedy.

The property manager responded that the tenant had a previous hearing in September 2022 and the landlord KS was at that hearing and he was identified as being a landlord. The other tenants on the property did not have issues paying their rent. When the

property manager took over management of the property, he offered a payment plan to the tenant but she refused and then proceeded to get lawyers involved.

The property manager acknowledged there was an issue with the hydro account but it has since been rectified and the landlord is agreeable to compensating the tenant for the hydro cost of \$158.00 upon receipt of a bill or invoice showing the tenant paid that amount. The internet is not a service provided under the tenancy agreement and was an arrangement between tenants to share internet services; and, the tenant could obtain internet services in other ways than accessing the farmhouse. Garbage removal was terminated for a period of time; however, it has been restored. During the period the garbage was not being picked up, the property manager instructed the tenants to leave the garbage and he would deal; however, the landlord is agreeable to reimbursing the tenant the cost of the dumping fees upon receiving the receipts, although the property manager indicated that \$900.00 to dump the garbage seems high. The tenant's demotion at work could be due to any number of reasons and the tenant's stress can be influenced by many different things as well. The property manager suspects the tenant is trying to stay in the rental unit as long as she can without paying rent.

In the event I were to provide the landlord with an Order of Possession, I requested the parties provide me with submissions pertaining to the effective date for such an Order of Possession. The property manager requested an Order of Possession effective at the end of February 2023 and was of the view this was a reasonable request considering this dispute involves several months of unpaid rent and the property manager's previous attempts to work with the tenant. The tenant's representative requested the tenant be permitted to occupy the rental unit until the end of March 2023 in recognition of her lack of funds, which will render the tenant homeless, and the tenant has two children aged 13 and 10.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 26 of the Act provides for a tenant's obligation to pay rent, as follows:

- 26 (1) A tenant *must* pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

[My emphasis in bold]

Where a tenant does not pay rent, section 46 of the Act permits the landlord to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”). When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, the parties provided consistent and undisputed submissions that:

- The tenants were required to pay rent of \$1400.00 on the first day of every month;
- The tenants did not pay rent for the months of August 2022 through January 2023, on or before the first day of these months;
- The landlord’s property manager posted to the rental unit door and the tenant found a 10 Day Notice on January 9, 2023, indicating rent of \$8400.00 was outstanding as of January 1, 2023;
- The tenant entered a payment of \$1400.00 to the property manager’s rent portal on January 9, 2023 which the property manager received on January 10, 2023. The tenant intended this payment to represent rent for January 2023 rent.
- The tenant made three partial payments between January 27, 2023 through February 3, 2023 totalling \$1400.00 that the tenant intended to use toward rent for February 2023.

Having paid \$1400.00 toward January 2023 rent, that leaves \$7000.00 in rent that remains outstanding for the five months of August 2022 through December 2022.

Although the tenant made submissions that she was confused as to who to pay rent to or how to pay rent prior to receiving the January 9, 2023 10 Day Notice, the tenant did not pay the remaining \$7000.00 owing within five days of receiving the January 9, 2023 10 Day Notice.

The tenant acknowledged that she did not pay the outstanding rent within five days of receiving the January 9, 2023 10 Day Notice because she did not and still does not have the funds to do so. The tenant did file to dispute the 10 Day Notice within five days and I proceed to consider whether the tenant had a legal basis for not paying rent or some other reason to find the 10 Day Notice unenforceable.

My authority to resolve disputes is conveyed to me by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act*. I am tasked with making decisions to resolve disputes that are consistent with the Act. I do not have authority to grant a party equitable relief.

Section 91 of the Act provides that: "Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." The Act provides very specific and limited circumstances where a tenant has a legal right to withhold rent or make deductions from rent otherwise payable. They are where:

- a tenant has overpaid a security deposit or pet damage deposit;
- a tenant has paid an unlawful rent increase to the landlord;
- the tenant has been given a rent reduction pursuant to a Notice to Terminate a Service or Facility by the landlord;
- the tenant has paid for emergency repairs to the property under section 33 of the Act; or,
- the tenant has been given authorization to reduce or withhold rent by the landlord or an Arbitrator.

The tenant put forth submissions concerning loss of services and breaches of the Act by the landlord; however, breaches do not entitle a tenant to withhold rent except in the circumstances outlined above. The tenant did not have authorization from the landlord to make deductions from rent or withhold. Nor did the tenant have the prior authorization of an Arbitrator to make deductions from rent or withhold rent. The tenant has not put forth any argument that they overpaid a security deposit or pet damage deposit; paid an unlawful rent increase to the landlord; or paid for an emergency repair to the rental unit in accordance with section 33 of the Act. In the absence of any evidence of one of the permissible reasons for withholding rent, I find the tenant has not provided me with a reason to cancel the 10 Day Notice.

Having reviewed the 10 Day Notice and being satisfied it is in the approved form, duly completed and reflects the accurate amount of rent that was not paid, I uphold the 10 Day Notice dated January 9, 2023 and I dismiss the tenant's request that I cancel it.

Having dismissed the tenant's request for cancellation of the 10 Day Notice dated January 9, 2023, I find it unnecessary to further consider the validity of the other two 10 Day Notices issued on August 31, 2022 and September 12, 2022.

Section 55(1) and (1.1) of the Act provide as follows:

- 55** (1) 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.

(1.1) 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.**

[My emphasis in bold]

For reasons provided already, I have upheld the 10 Day Notice dated January 9, 2023 and dismissed the tenant's request that I cancel it. The 10 Day notice dated January 9, 2023 complies the form and content requirements of the Act. Therefore, I must grant the landlord an Order of Possession pursuant to section 55(1) of the Act.

I heard arguments from both parties with respect to the effective date for an Order of Possession if one was provided by me. I find the landlord's request for an Order of Possession effective at the end of February 2023 to be reasonable considering the tenant has paid for occupancy for the month of February 2023 and to extend the effective date beyond that to be unreasonable considering the tenant failed to pay five months of rent. I am also of the view that the issue of unpaid rent has been outstanding for several months and without making any payments until recently I expect that this outcome ought to have been reasonably foreseeable by the tenant.

Pursuant to section 55(1.1) of the Act, I provide the landlord with a Monetary Order for the remainder of the unpaid rent of \$7000.00.

As for the filing fees paid by the tenant, I award the tenant recovery of \$100.00 in recognition the tenant was successful in disputing the Two Month Notice under the file number ending in #####375. I provide the tenant a Monetary Order for \$100.00.

I have made no award or authorization with respect to the tenants' security deposit and it remains in trust at this time, to be administered at a later date, as required under section 38 of the Act.

Conclusion

The 10 Day Notice dated January 9, 2023 is upheld and the landlord is provided an Order of Possession effective February 28, 2023.

The landlord is provided a Monetary Order for the outstanding rental of \$7000.00.

The tenant is provided a Monetary Order in the amount of \$100.00 to recover the filing fee paid for the successful dispute and cancellation of the Two Month Notice, as set aside in the Interim Decision.

The balance of the remedies sought by the tenant are moot with the end of the tenancy, except for the tenant's monetary claim. The tenant's monetary claim against the landlord was severed and dismissed with leave to reapply.

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: February 08, 2023

Residential Tenancy Branch