Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNRT, MNDCT, RR, RP, PSF, OLC

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated September 20, 2022 (the "One Month Notice") pursuant to section 47;
- a Monetary Order of $5,000.00 for the cost of emergency repairs that Tenant made during the tenancy pursuant to section 33;
- a Monetary Order of $5,000.00 for the Tenant's monetary loss or money owed by the Landlords pursuant to section 67;
- an order to allow the Tenant to reduce rent by $5,000.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the Landlord provide services or facilities required by law pursuant to section 27; and
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62.

The Landlords and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. CF also attended this hearing as the Tenant's assistant and witness.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Applicant

This application initially included a second applicant and tenant, CF. CF stated that he has been living at the rental unit with the Tenant for over a year. The Landlords stated

that they do not have any tenancy agreement or relationship with CF. I have reviewed a copy of the tenancy agreement and find that CF did not sign this document. I find the parties did not amend their tenancy agreement to add CF as a tenant.

Residential Tenancy Policy Guideline 13. Rights and Responsibility of Co-tenants ("Policy Guideline 13") defines a "tenant" as "a person who has entered into a tenancy agreement to rent a rental unit". Policy Guideline 13 further states that if a "tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant".

Based on the evidence presented, I find CF to be an occupant and not a tenant. As such, I have removed CF as a party to this application pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package") and evidence in two USB sticks. The Landlords noted that the Tenant's evidence was received two days late under the Rules of Procedure, but confirmed that they have had a chance to review the evidence and did not request an adjournment. I find the Landlords to be served with the NDRP Package and the Tenant's evidence in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of a package with the Landlords' evidence. I find the Tenant was served with the Landlords' evidence in accordance with section 88 of the Act.

Preliminary Matter – Amendment of Application

The Tenant's evidence includes a copy of a 10 day notice to end tenancy for unpaid rent or utilities dated October 6, 2022 (the "10 Day Notice"), though the Tenant did not submit an amendment to dispute the 10 Day Notice. Records of the Residential Tenancy Branch indicate the Tenant had submitted a copy of the 10 Day Notice on October 11, 2022. The Tenant wrote that she was "Disputing RTB 30 posted on door October 13, 2022. (*sic*) Unpaid amount of $550 deducted from October rent of $2500 for Emergency Repairs requested in writing on several occasions to fix toilet. No response." During the hearing, the Tenant stated she was confused about which eviction notices she had disputed and explained that the parties' evidence both refer to a plumbing issue

which is related to the 10 Day Notice. The Landlords confirmed that they did not make an application based on the 10 Day Notice.

Under these circumstances, I find it can be reasonably anticipated for the parties to address both the One Month Notice and the 10 Day Notice during this hearing. Therefore, I allowed the Tenant to amend her application to include a claim to dispute the 10 Day Notice pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Severing of Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state 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.
>
> (emphasis added)

I find the most important issue in this application is whether this tenancy will be ending under either the One Month Notice or the 10 Day Notice. I find all of the Tenant's other claims on to be unrelated to the issue of whether the tenancy will be ending. As such and pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss all other claims on this application with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to cancel the 10 Day Notice?
3. Are the Landlords entitled to an Order of Possession?

4. Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Tenant moved into the rental unit on January 1, 2020 with a co-tenant. That co-tenant moved out and the parties subsequently entered into a written tenancy agreement effective March 1, 2020 for a fixed term ending March 1, 2021. The tenancy continued thereafter on a month-to-month basis. Rent is $2,500.00 due on the first day of each month.

The Tenant testified that she had paid a security deposit of $1,250.00 in December 2019. The Tenant stated that the Landlords wrote on the March 2020 tenancy agreement that the Tenant was to pay a $1,250.00 security deposit by May 2020 but did not try to collect this deposit until 2021. The Tenant stated she assumed her old deposit was transferred over. The Tenant stated the Landlords took the new security deposit off monies that the Tenant was supposed to receive in 2021 as a rent reduction due to one of the bathrooms not working at the time. The Tenant stated that she “paid” a total of $2,500.00 in security deposits to the Landlord.

The Landlords testified that the January 2020 tenancy had been dissolved for non-payment of rent and the Tenant’s first security deposit was used to cover unpaid February 2020 rent. The Landlords referred to their March 2020 tenancy agreement which stated that the Tenant was to repay a new $1,250.00 security deposit by May 2020. The Landlords stated that the Tenant did not pay by May 2020 and that they did not push the Tenant at the time due to covid-19. The Landlords explained that they did not feel comfortable without a security deposit and that in lieu of paying the Tenant a rent reduction for a bathroom tub issue, they took the security deposit off the rent reduction. The Landlords stated that the Tenant “paid” $1,250.00 in 2021.

The One Month Notice is signed by one of the Landlords, RM, and has an effective date of October 31, 2022. It states the Tenant has assigned or sublet the rental unit without the Landlords’ written consent. The details of cause are as follows (portions redacted for privacy):

> The tenant [name] has placed a room in the residence ([rental unit address) on Kijiji for monthly rental of $1,400.00. [The Tenant] has not obtained permission at any time by me, [Landlord RM] or my Wife, [Landlord NM] to sublet the residence. This Kijiji post was posted on September 15th with Kijiji Add ID of [number]. This add is posted by [CF] on Kijiji who is beleived to be the significant other of the tenant [name]. On September 14th, our realtor [SA] contacted [the Tenant] to advise of a showing at the residence. [The Tenant] responded via email on that day "yes thats fine as long as they aren't here long because we are showing the suite ourselves at 6:30 tonight for a short term renter."
>
> Also listed on Kijiji to confirm the residence is a second listing by [CF] Ad ID [number] that advertises a yard sale at the property. It advertises tents which have been on the property for about a month creating multiple calls from a neighbour named [J] to [Landlord RM] regarding the state of the property with large tents and structures. [Landlord RM] has been advised by [city] Bylaws that they are investigating more then one complaint to the property regarding breach of [city] Municipal Bylaws pertaining to tents on the property. (*sic*)

The Tenant acknowledged receipt of the One Month Notice attached to her door on September 21, 2022.

The 10 Day Notice is signed by RM and has an effective date of October 17, 2022. It states the Tenant failed to pay $550.00 of $2,500.00 in rent due on October 1, 2022. According to the Landlords, the 10 Day Notice was posted to the Tenant's door on October 6, 2022. The Tenant was unsure when she received the 10 Day Notice but indicated that she probably received it a day or two after that. Records of the Residential Tenancy Branch indicate the Tenant submitted a copy of the 10 Day Notice on October 11, 2022.

The Landlords explained that they became aware of Kijiji ads listing a room in the rental unit for rent. The Landlords stated it looked like that the room had been turned into an Airbnb suite for $1,400.00 a month. The Landlords referred to copies of the advertisements submitted into evidence.

The Landlords stated that neighbours have complained about police coming to the rental unit and that bylaw has been involved due to structures in front of the house. The Landlords stated that the Tenant had installed a large structure in the driveway without permission. The Landlords stated that there are concerns about people sleeping in the structure illegally and the Landlords are threatened to be fined by bylaw. The Landlords

stated that the Tenant had painted the deck and installed a front door ramp in the past without any communication.

The Landlords stated that they felt the Kijiji ads were the last straw, which led the Landlords to issue the One Month Notice. The Landlords stated that the bylaw problem adds further grounds to the One Month Notice.

Regarding the 10 Day Notice, the Landlords stated that the Tenant had given the Landlords a $550.00 invoice for CF to snake the toilet. The Landlords stated the invoice was clearly created by the Tenant or CF. According to the Landlords, the Tenant had previously emailed them about a toilet problem. The Landlords testified their plumber came out to the rental unit, who checked the water and flushed the toilet many times. The Landlords stated that the plumber did not find anything wrong with the toilet and refused to charge the Landlords for the visit, since he had also done other work for the Landlords. The Landlords stated that two weeks later when rent was due, the Landlords received the “made-up” invoice from the Tenant and less rent. The Landlords stated the Tenant did not call them to say she needed emergency repairs done on the toilet. The Landlords stated that there was no communication from the Tenant between the time that the plumber was at the rental unit and when the Landlords received the invoice on October 1, 2022.

Copies of the invoice from CF dated October 1, 2022 have been submitted into evidence. It includes entries of $250.00 for “Snake toilet”, $300.00 for “Snake 2 bathroom drains”, and $0.00 “HST” for a total of $550.00 billed to the Landlords.

The Tenant argued that the Kijiji ads are none of the Landlords’ business. The Tenant argued that she is entitled to have roommates and that the tenancy agreement does not limit the number of occupants. The Tenant argued that it is not unreasonable to have two or three occupants in a three-bedroom house.

The Tenant stated that there is no proof of the neighbour complaints. The Tenant stated a neighbour had complained about the Landlords not repairing the fence. The Tenant denied that she had received a call or visit from bylaw officers. The Tenant mentioned she received a bylaw letter from a police officer which she questioned. The Tenant stated that RM is an RCMP officer.

The Tenant stated that the Landlords’ plumber came to look at the toilet for 5 minutes and didn’t do anything except for tightening the bolts. The Tenant stated that there is a continuous problem with the sinks leaking and toilets backing up. The Tenant referred to

email correspondence submitted into evidence. The Tenant stated she was unable to rent out a room because the bathroom was not functional and did not have a shower.

The Tenant argued that she was served the eviction notices because the Landlords are trying to sell their house and the Tenant had requested 24 hour written notices. The Tenant argued that the Landlords wanted to renovict the Tenant. The Tenant stated that she had maintained the property as if it was her own.

The Tenant argued that CF is qualified to do the toilet repair. When asked if CF is a licenced plumber, CF stated he has been a carpenter for over 20 years and built houses. CF stated that he knows how to do the repair. The Tenant stated that the issue with the toilet was that it wouldn't flush and was plugged. The Tenant stated that she and CF replaced the toilet with a higher eco-friendly toilet, because the original toilet was "child-sized". The Tenant stated that when the Landlords re-did the bathroom, they did not add a safety bar, so it was difficult to get down onto the toilet. The Tenant acknowledged that she did not ask the Landlords about replacing the toilet. The Tenant stated that she kept the Landlords' original toilet.

The Tenant's evidence includes an email to NM dated September 3, 2022, which states in part:

> *Ive had to put new bolts for the closet doors because the handles are mostly stripped and the guest toilet needs to be snaked. We have the tool but would require payment for that service.*

The Landlords stated that it was the first time they are hearing about the toilet being replaced. The Landlords stated that they received bylaw complaints when they were on vacation, and the bylaw officer had requested police attendance. RM explained he works for the RCMP and has no jurisdiction over the municipal police department. The Landlords referred to their email correspondence and argued that they have responded to the Tenant's complaints and do care. The Landlords expressed that they would be unable to continue with the tenancy relationship since the Tenant has withheld rent and is subletting on Kijiji.

The Tenant stated that she did not have the Landlords' emergency contact for phoning and texting, and that the parties communicate via email. The Tenant stated she was told not to phone the Landlord. The Landlords denied this. The Landlords stated that the Tenant has the Landlords' phone number for emergency situations. The Landlords

stated that the Tenant even gave their phone number to a neighbour previously, and the neighbour had called the Landlords to complain about the Tenant.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

> **Form and content of notice to end tenancy**
> 52 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.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

(a) not earlier than one month after the date the notice is received, and
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(g) of the Act on September 21, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records of the Residential Tenancy Branch indicate the Tenant submitted this application on September 26, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The cause stated in the One Month Notice corresponds to section 47(1)(i) of the Act, which states:

> **Landlord's notice: cause**
> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> > […]
> > (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

Residential Tenancy Policy Guideline 19. Assignment and Sublet ("Policy Guideline 19") states:

> **C. SUBLETTING**
> **Sublets as contemplated by the *Residential Tenancy Act***
> When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

[…]

Occupants/roommates
Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

I find it is not disputed that the Tenant had listed a bedroom with an ensuite bathroom within the rental unit for short-term rental on Kijiji, and that the Tenant continues to reside in the rental unit. Based on Policy Guideline 19 above, I find this arrangement does not meet the definition of a "sublet" as contemplated by the Act, since the Tenant remains in the rental unit. Therefore, I am unable to conclude that the Tenant has purported to sublet the rental unit without the Landlord's permission.

Policy Guideline 19 further states:

> If a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a

> landlord may issue a One Month Notice to End Tenancy (form RTB-33) for a breach of a material term. Variables such as the terms of the tenancy agreement and whether a tenant remains in occupation of the rental unit will be considered on a case-by-case basis by an arbitrator.

I find that breach of a material term is not a cause selected on the One Month Notice. I find the Landlords have not pointed to any specific term in the tenancy agreement prohibiting short-term rentals.

Furthermore, I do not find the Landlords to allege, nor do I find the evidence to support a finding that the Tenant has purported to assign the tenancy agreement, that is, to permanently transfer her rights under the tenancy agreement to a third party.

In addition, the Landlords argued that the Tenant is in breach of municipal bylaws due to tents and other structures left in the front yard. However, I find the only cause selected on the One Month Notice is for assignment or subletting the rental unit without the Landlords' written consent. As mentioned above, I do not find the Tenant to have purported to assign or sublet the rental unit under section 47(1)(i) of the Act.

Based on the foregoing, I conclude the Landlords have not proven sufficient cause for ending the tenancy as stated in the One Month Notice and under section 47(1)(i) of the Act. Accordingly, I order that the One Month Notice be set aside.

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

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

Section 46(2) of the Act requires a 10 day notice to end tenancy for unpaid rent or utilities to comply with section 52 of the Act. I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenant submitted the 10 Day Notice to the Residential Tenancy Branch and indicated that she was disputing it on October 11, 2022, which is the fifth day after the Landlords had posted the 10 Day Notice to the Tenant's door.

The Tenant argued that she was entitled to withhold $550.00 from October 2022 rent for emergency repairs.

Section 33 of the Act states:

> **Emergency repairs**
> 33(1) In this section, "emergency repairs" means repairs that are
> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) made for the purpose of repairing
> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.
> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
> (3) A tenant may have emergency repairs made only when all of the following conditions are met:
> (a) emergency repairs are needed;
> (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
> (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
> (4) A landlord may take over completion of an emergency repair at any time.
> (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
> (a) claims reimbursement for those amounts from the landlord, and
> (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
> (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5)(b);
(c) the amounts represent more than a reasonable cost for the repairs;
(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case, I find the Tenant had emailed NM on September 3, 2022 about the guest toilet needing to be snaked and suggested that she wanted to be paid by the Landlords for this service.

I find the Landlords' plumber had subsequently tested the toilet and determined that it did not require any repairs. I find the Tenant acknowledged that the plumber had attended at the rental unit, though according to the Tenant he was there for only "5 minutes".

I find that between the plumber's visit sometime after September 3, 2022 and when the Tenant sent CF's invoice to the Landlords on October 1, 2022, the Tenant did not communicate with the Landlords about any further issues with the toilet or bathroom drains. I accept the Landlords' evidence that the Tenant had their telephone number for emergencies. I find the Landlords' phone number is stated on page 1 of the tenancy agreement, which is the same number also stated on the One Month Notice and the 10 Day Notice. I find that in any event, the Tenant did not email or otherwise contact the Landlords about any emergency during this time.

I find the descriptions in CF's invoice dated October 1, 2022 are for snaking the toilet and bathroom drains. However, I find that neither CF nor the Tenant provided details to explain how this work was performed, or why it had been urgent at the time. I find there is no video or plumber report to show the condition of the toilet or possible causes for plugging.

Instead, I find the Tenant stated that they had replaced the toilet with a higher one, because the original one was "child-sized". I find the Tenant acknowledged that she did not inform the Landlords in advance.

Based on the evidence presented, I am unable to conclude that the Tenant had made "emergency repairs" which were "urgent" and "necessary" for the health or safety of anyone or for the preservation or use of residential property, as required under sections 33(1) and 33(3)(a) of the Act. I find that in any event, the Tenant did not make at least two attempts to phone the Landlords about needing emergency repairs as required under section 33(3)(b) of the Act.

As such, I find the Tenant was not entitled to withhold $550.00 from payment of October 2022 rent to the Landlords under section 33(7) of the Act. I find the Tenant also did not request an extension of time to pay overdue rent to the Landlord.

I conclude the Tenant's claim to dispute the 10 Day Notice must be dismissed, and the 10 Day Notice is to be upheld.

3. Are the Landlords entitled to an Order of Possession?

Section 55(1) of the Act states:

> **Order of possession for the landlord**
> 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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having upheld the 10 Day Notice, I find the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

Since the effective date of the 10 Day Notice has already passed, I grant an Order of Possession to the Landlords effective two (2) days after service of the Order upon the Tenant.

4. Are the Landlords entitled to a Monetary Order for unpaid rent?

Under section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and

the tenant's application to dispute the notice is dismissed or if the landlord's notice is upheld.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay $550.00 to the Landlords for the balance of unpaid October 2022 rent.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain $550.00 of the Tenant's $1,250.00 security deposit on account of the amount awarded to the Landlords in this decision.

I note the Tenant stated that she assumed the security deposit from her previous tenancy with the Landlords and another co-tenant had carried over into this tenancy. However, I find the tenancy agreement makes no reference to such a carryover and states that the Tenant was to pay a security deposit of $1,250.00 by May 1, 2020. I find the parties agreed that the Tenant's obligation to pay this security deposit was fulfilled by way of a rent reduction in 2021. Therefore, I find the Landlords to hold $1,250.00 as a security deposit in trust for the Tenant.

Conclusion

The One Month Notice is set aside.

The 10 Day Notice is upheld.

The remaining claims made by the Tenant on this application are severed under the Rules of Procedure and dismissed with leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay **$550.00** to the Landlords for unpaid rent. The Landlords are authorized to retain this amount from the $1,250.00 security deposit held by the Landlords under section 72(2)(b) of the Act. The balance of the Tenant's security deposit ($700.00) must be dealt in accordance with the Act, the regulations, and the parties' tenancy agreement.

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 27, 2023

Residential Tenancy Branch