



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR
Landlords: OPR-DR, MNR-DR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

On January 14, 2023 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 11, 2023 (the 10 Day Notice).

On January 19, 2023 the landlords applied for:

- an order of possession, having served the 10 Day Notice; and
- a monetary order for unpaid rent, having served the Notice.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, are the landlords entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began May 15, 2020; rent is \$2,300.00, due on the first of the month; and the tenant paid a security deposit of \$1,150.00, which the landlords still hold.

Later in the hearing, the tenant testified that the parties subsequently agreed that the tenant could pay monthly rent in two payments: the first on the 15th and the second on the last day of the month. The landlord testified the tenant had proposed this, but the landlord had not agreed.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date of January 22, 2023, states the grounds for ending the tenancy, and is in the approved form.

The landlord testified the 10 Day Notice was served on the tenant in person on January 11, 2023; this was confirmed by the tenant.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$6,150.00, due on January 1, 2023. The Notice also states that the tenant has failed to pay an amount owing for utilities. The landlord testified that no 30-day demand letter was served on the tenant.

The landlord testified that the tenant made rent payments as follows:

Month	Rent	Rent paid	Monthly outstanding
November 2021	\$2,300.00	\$1,900.00	\$400.00
December 2021	\$2,300.00	\$1,900.00	\$400.00
January 2022	\$2,300.00	\$1,200.00	\$1,100.00
February 2022	\$2,300.00	\$2,300.00	\$0.00
March 2022	\$2,300.00	\$1,900.00	\$400.00
April 2022	\$2,300.00	\$1,900.00	\$400.00
May 2022	\$2,300.00	\$700.00	\$1,600.00
June 2022	\$2,300.00	\$2,800.00	- \$500.00
July 2022	\$2,300.00	\$2,300.00	\$0.00
August 2022	\$2,300.00	\$2,300.00	\$0.00
September 2022	\$2,300.00	\$2,500.00	- \$200.00
October 2022	\$2,300.00	\$2,500.00	- \$200.00
November 2022	\$2,300.00	\$850.00	\$1,450.00
December 2022	\$2,300.00	\$1,850.00	\$450.00
January 2023	\$2,300.00	\$450.00	\$1,850.00
February 2023	\$2,300.00	\$0.00	\$2,300.00
Total outstanding rent			\$9,450.00

Submitted as evidence by the landlord is a Direct Request Worksheet; a Monthly Rent Breakdown, documenting rent payments from November 2021 to January 2023; cheques to the landlord from BC Employment and Assistance; and bank statements and e-transfer receipts which support the landlord's testimony on rent payments.

The tenant testified that she made rent payments as follows:

Month	Rent	Rent paid	Monthly outstanding
November 2021	\$2,300.00	\$2,300.00	\$0.00
December 2021	\$2,300.00	\$2,300.00	\$0.00
January 2022	\$2,300.00	\$2,300.00	\$0.00
February 2022	\$2,300.00	\$2,300.00	\$0.00
March 2022	\$2,300.00	\$2,300.00	\$0.00
April 2022	\$2,300.00	\$2,300.00	\$0.00
May 2022	\$2,300.00	\$2,300.00	\$0.00
June 2022	\$2,300.00	\$2,300.00	\$0.00
July 2022	\$2,300.00	\$2,300.00	\$0.00
August 2022	\$2,300.00	\$2,300.00	\$0.00
September 2022	\$2,300.00	\$2,500.00	- \$200.00
October 2022	\$2,300.00	\$2,500.00	- \$200.00
November 2022	\$2,300.00	\$2,300.00	\$0.00
December 2022	\$2,300.00	\$1,600.00	\$700.00
January 2023	\$2,300.00	\$0.00	\$2,300.00
February 2023	\$2,300.00	\$0.00	\$2,300.00
Total outstanding rent			\$4,900.00

The tenant testified that each month her rent was paid by two government cheques sent directly to the landlord, in the amounts of \$1,200.00 and \$700.00, and that the tenant paid the remaining \$400.00 in cash ($1,200 + 700 + 400 = 2,300$), but was not given a receipt.

Considering the tenant's testimony that rent had been paid in full each month from November 2021 to August 2022, I asked why she had paid \$2,500.00 for September and October 2022, \$200.00 over the rent amount of \$2,300.00. The tenant testified that there were three or four months when the landlord had been out of town, and had not come to collect the \$400.00 the tenant paid monthly in cash. The tenant testified that the tenant and landlord were later not sure how much the tenant owed as a result; the tenant testified it was for a maximum of four months ($\$400.00 \times 4 \text{ months} = \$1,600.00$). The tenant also testified that she owed a maximum of \$1,200.00 for that time period. The tenant testified that in good faith she had proposed to the landlord that she owed one full month's rent (\$2,300.00), and that the parties came to this verbal agreement on a date sometime before June 20, 2022.

The tenant testified that on June 20, 2022 the parties signed a new tenancy agreement and amendment.

The landlord testified that they have received only three cash payments from the tenant over the course of the tenancy, as follows, and that a receipt was provided for each: payment of the security deposit, payment of half of the May 2021 rent, and payment of \$2,300.00 for the June 2021 rent.

The tenant testified that in November 2022 the government stopped sending the \$1,200.00 and \$700.00 cheques to the landlord. The tenant testified that she paid November 2022 rent in full by two e-transfers, but was not sure if the receipts were in evidence. The only e-transfer receipt submitted as evidence by the tenant is for a payment of \$450.00 to the landlord on January 5, 2023. In a January 5 text exchange submitted as evidence by the tenant, the landlord states they are very concerned about getting the rent on time, that the tenant has not been responding about the missing rent, and that the ministry cheques have stopped coming in. The tenant replied that the \$450.00 was for December rent because she had to pay a plumber \$700.00 to repair a burst pipe just before Christmas.

The tenant testified that she withheld \$700.00 of the December 2022 rent because she paid for an emergency repair. The tenant testified that very late on December 23, 2022 she heard water running under the house, so called a plumber. A receipt for \$700.00 for emergency plumbing is submitted as evidence. The tenant testified she did not give the landlord a written account of the emergency repairs accompanied by the receipt.

The landlord testified the tenant did not provide them with a copy of the \$700.00 plumbing receipt.

The tenant testified that she tried to pay rent for January and February 2023, but that the landlord would not accept it, stating that they will not receive any partial payments, and that the tenant must pay the outstanding rent in full or move out. The tenant testified she told the landlord she did not owe the amount of rent they said she did. In a text exchange between the parties, dated January 14, the tenant stated that she will be late paying the January 15 portion of the rent; the landlord replied, asking the tenant if she understands the notice they have given the tenant, and that the tenant has just a few more days to pay the outstanding amount in full, or must move out by January 22. The landlord's text stated they will not accept partial payments.

The landlord testified that a few weeks ago they received a cheque for \$600.00 from BC Employment and Assistance, but did not deposit it as the applicant named on the cheque was not the tenant.

Analysis

Based on the testimony of the parties, I find the landlord served the 10 Day Notice on the tenant in accordance with section 88 of the Act, and the tenant filed in time to dispute the Notice.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

As the landlord testified they did not serve the tenant a 30-day demand letter for outstanding utility charges, I have not considered the utility charges stated owing on the 10 Day Notice.

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The tenant testified that she withheld rent in December 2022 because she paid for an emergency repair. Section 33(5)(b) states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. Section 33(7) states that 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. As the tenant testified she did not give the landlord a written account of the emergency repairs accompanied by the receipt, I find she was not entitled to withhold rent.

The landlord and tenant have provided conflicting testimony regarding the amount of rent outstanding in this tenancy.

The bank statements and e-transfer receipts submitted by the landlord corroborate the landlord's testimony on the amount of rent paid each month. And the landlord's testimony on rent payments consistently made sense.

The tenant submitted little documentary evidence in support of her testimony on rent payments, and some of her testimony did not make sense, such as the tenant claiming she had paid rent in full each month from November 2021 to August 2022, then stating that for September and October 2022 she had paid rent plus an additional \$200.00 to make up for rent shortfalls. While this inconsistent testimony could have been an honest mistake, the inconsistency indicates that the tenant is less reliable than the landlord, particularly in the face of the landlord's consistent, logical testimony, which was supported by documentary evidence.

Based on the evidence before me, I find the landlord's accounting of rent payments more reliable than that of the tenant.

I dismiss the tenant's application to cancel the 10 Day Notice and award an order of possession to the landlord.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, February 27, 2023.

[Policy Guideline 3](#). *Claims for Rent and Damages for Loss of Rent* states that a tenant is liable to pay rent until a tenancy agreement ends.

I find the landlord is entitled to recover \$7,150.00 in unpaid rent for November 2021 to January 2023, and \$2,217.86 for February 1–27, 2023 ($2,300/28 \times 27 = 2,217.86$), for a total of \$9,367.86.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$1,150.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent	\$9,367.86
Security deposit	-\$1,150.00
Owed to landlords	\$8,217.86

Conclusion

The tenant's application is dismissed.

The landlords are granted an order of possession. The order of possession must be served on the tenant. The order is effective two days after it is received by the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlords are granted a monetary order in the amount of \$8,217.86 for unpaid rent. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 15, 2023

Residential Tenancy Branch