



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, PSF, OLC, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also requesting the Landlord provide services or facilities under section 32 of the Act, for the Landlord to comply with the Act, *Residential Tenancy Regulation* or tenancy agreement under section 62 of the Act and to recover the cost of the filing fee under section 72 of the Act.

The Landlord attended the hearing. The Tenant attended the hearing but had to leave shortly after it commenced and authorized their Agent, D.H., to speak on their behalf. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Service of the Notice of Dispute Resolution Package (the “Materials”) was confirmed at the hearing. The Landlord confirmed receipt of the Materials and raised no issues with service. Based on the testimonies I find that the Landlord was served with the Materials as required under section 89 of the Act. The Landlord submitted no documentary evidence.

Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The tenancy agreement was discussed. The parties did not agree a number of details regarding the agreement. D.H. stated the agreement began around 12 years ago, that rent was around \$700.00 per month and did not know when rent was due. They did not know if there was a written tenancy agreement. They believed the Tenant still occupied the rental unit though stayed with friends some of the time.

The Landlord testified that the agreement started 3 years ago and that rent is \$520.00 per month due on the first day of the month. A security deposit of \$260.00 equivalent to half a month's rent was paid by the Tenant which they still hold. They were unsure if the Tenant still occupies the rental unit and stated there was a written tenancy agreement though it was not entered into evidence. I find the Landlord's testimony to have a greater degree of clarity and certainty and therefore afford it greater weight than the testimony of D.H. Accordingly, I find on the balance of probabilities, that the details of the tenancy put forward by the Landlord are correct.

The Landlord testified as follows. Rent due February 1, 2023 and March 1, 2023 had not been paid by the Tenant and that they served the Notice in early March by attaching to the door of the rental unit.

A copy of the Notice was entered into evidence by the Tenant. The Notice is signed March 9, 2023 and provides that rent due March 1, 2023 was not paid. The section that confirms the amount of outstanding rent was torn off so was not visible to me. The effective date of the Notice is March 23, 2023.

The Landlord testified that they indicated on the Notice that \$1,260.00 was owed as there had been arrears from prior months. Rent due April 1, 2023 was also not paid by the Tenant. The Landlord stated the total arrears were \$1,780.00 as of April 1, 2023 and they seek this amount from the Tenant and an Order of Possession.

D.H. Testified as follows. They had been assisting the Tenant complete housing application following a visit in February 2023. The Tenant brought the Notice to them and had been refusing to pay rent due to the conditions of the rental unit. There was wet flooring when it rained due to faulty piping and the Tenant feels like there is mould in the property. There is also an issue with rodents. The Tenant withheld rent in the hope that the Landlord would fix the issues with the property.

D.H. had a copy of the Notice but the amount of rent outstanding was also not visible on it. They were not sure regarding the total rental arrears, though thought it might be lower than the figure put forward by the Landlord. The Tenant had tried to pay rent but the Landlord was out of town.

In response to the testimony of D.H., the Landlord confirmed the following. The plumbing issue had been fixed years ago and there had been a further leak in the bathroom but this was fixed in January 2023. Rodents were an issue in the whole neighbourhood and they were setting traps.

The Tenant paid rent in cash, though the Landlord had asked for direct deposit or cheque and the Tenant refused both of these methods. They had tried to arrange with the Tenant to pick up cash but the Tenant was difficult to finalize the logistics of this with.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which are:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- if the landlord gives authorization to not pay rent; and
- as ordered by the Director.

The Tenant's Agent put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amount of \$520.00 was due on March 1, 2023.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's and the Tenant's Agent's testimony confirm that the Tenant did not pay the rent on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 23, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. The amount of outstanding rent on the Notice was not shown as it was damaged. The Landlord put forward a figure of \$1,780.00 in this regard and while this monetary amount was disputed by the Tenant's Agent, no figure or substantive reasoning as to why the Landlord's testimony was inaccurate was presented to me. I find that the Landlord's testimony regarding the amount of rent owed, and the tenancy as a whole, was more precise and consistent when compared to that of the Tenant's Agent. Accordingly, I give the Landlord's testimony greater weight and I find that the amount of outstanding rent

owed by the Tenant to the Landlord to be \$1,780.00. Therefore, the Tenant is ordered to pay \$1,780.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

As the Tenant's did not pay a filing fee for the Application, rather a request for a fee waiver was submitted and approved, I find the Tenant is not entitled to recover the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenant. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a **Monetary Order**. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

| Item | Amount |
|------------------------|-------------------|
| Outstanding rent | \$1,780.00 |
| Less: security deposit | (\$260.00) |
| Total | \$1,520.00 |

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 27, 2023

Residential Tenancy Branch