



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNR, RR, RP, OLC, FFT
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 14, 2023. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s Notice of Dispute Resolution Proceeding and evidence packages, and no service issues were raised. I find all documents were sufficiently served.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 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 looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not

the tenancy will continue, or end, based on the 10 Day Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities based off the Notice.

Issues to be Decided

- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities based off the Notice?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,500.00 is due on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$750.00. The Landlord stated that the Tenant failed to pay any rent for December 2022, or January 2023.

The Landlord issued a Notice and the Tenant acknowledged receipt on December 2, 2022, for unpaid rent in the amount of \$1,500.00. A copy of the Notice was provided into evidence. The Landlord stated that no rent was paid for December, and January, and the Landlord issued a second Notice on January 13, 2023, for \$3,000.00 which his for December and January rent combined. The Landlord stated he did not get any rent payments until February sometime. The Landlord stated that the Tenant currently owes \$3,000.00 in rent for December and January.

The Tenant acknowledged that he put a stop payment on his rent cheques and that he withheld rent for December and January. The Tenant stated he did this because there was a flood in the rental unit on November 6, 2022, and following that time, for the next couple of months, the rental unit was in various states of disrepair. The Tenant stated that he lost enjoyment of the unit until sometime in January. The Tenant pointed to the photos of the repairs, as well as a schedule of his costs he incurred as a result of having to eat out, stay elsewhere for some days, and to fly back home to stay with family for a period of time.

The Landlord stated he never authorized any expenses to be deducted from rent.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

In this case, I acknowledge that there was a flood, and that the Tenant lost some quiet enjoyment of his rental unit for a period of time while the repairs were ongoing. However, regardless of whether or not the Landlord breached the *Act* in this regard, or whether there was a loss of quiet enjoyment, the Tenant was still required to pay rent, as there is insufficient evidence he had any legal basis under the *Act* to withhold rent.

Further, I also note the following portion of the *Act*:

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.

(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.

The Tenant acknowledged receipt of the first Notice on December 2, 2022, and there is no evidence he made any payments within the allowable 5 day window. In fact, the Tenant acknowledged withholding this amount because he was unhappy with the condition of his rental unit and the renovations/repairs. I do not find the Tenant had a legal basis to withhold rent for this amount. As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the Notice, I find it complies with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of December 2022, and January 2023 (\$1,500.00 x 2), totalling \$3,000.00.

Pursuant to sections 72 of the *Act*, I award the recovery of the filing fee paid by the Landlord, given he was the successful party. In summary, I grant the monetary order in the amount of \$3,100.00.

If the Tenant feels he lost quiet enjoyment of his rental unit for a period of time, then he would have to file a separate application for monetary compensation, as that issue is not tied to unpaid rent.

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,100.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 19, 2023

Residential Tenancy Branch