



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910094905: CNR, MNRT, MNDCT, RR, RP, AAT, OLC, OT

File #910098519: OPR, MNRL-S, MNDCL-S, FFL

Introduction

The Tenant H.S. seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on December 9, 2023 (the “10-Day Notice”);
- a monetary order pursuant to ss. 33 and 67 to be paid back for the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs;
- an order pursuant to s. 70 that the Landlord allow access to the rental unit;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- other relief under the *Act*.

The Landlord files its own application seeking the following relief:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent by claiming against the security deposit;
- a monetary order pursuant to s. 67 for compensation or other money owed by claiming against the security deposit; and
- return of the filing fee pursuant to s. 72.

A.I. appeared as the Tenant. C.M., H.K., and K.S. appeared as the Landlord’s agents.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord's agent advised that the Tenants were served with the Landlord's application and evidence. The Landlord's evidence includes registered mail, sent to A.I. and H.S. as proof of service. A.I. confirmed receiving the Landlord's application materials. I find that pursuant to s. 71(2) of the *Act* that A.I. was sufficiently served with the Landlord's application materials. I further find that H.S. was served with the Landlord's application materials as evidenced in the proof of service provided.

Preliminary Issue – Tenant's Application

The Tenant advised that the Landlord had been served with her co-tenant's application and evidence. The Landlord's agent denied receipt of the application, though acknowledges receipt of the evidence. I enquired with the Tenant how and when the Landlord was served. The Tenant advised that this was via registered mail, though could not provide the registered mail receipt as proof of service. No proof of service was put into evidence by the Tenant. I enquired with the Landlord's agents whether there was an issue with proceeding on the main issue, being the enforceability of the 10-Day Notice, and was told that the Landlord was prepared to proceed.

There are two issues presently with the tenant's application. The first is that I am not satisfied that the application has been served. The second is that it seeks wide ranging relief that is not clearly related to each other. Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

To address both issues, I find that the main issue in dispute is the 10-Day Notice and the associate issue of unpaid rent, if any. Accordingly, I sever the tenant's claims under ss. 33 and 67 (compensation for emergency repairs), 67 (compensation), 65 (rent reduction), 32 (repairs), 70 (allow access to the rental unit), 62 (order that the Landlord comply), and the other relief sought under the *Act* from the application. I permit the

application to cancel the 10-Day Notice to proceed as it essentially replicate's the Landlord's own claim for an order of possession pursuant to the same notice.

The claims for compensation under ss. 33 and 67 (compensation for emergency repairs), 67 (compensation), 65 (past rent reduction) of the *Act* are dismissed with leave to reapply regardless of the outcome of this hearing. The claims under ss. 32 (repairs), 70 (allow access to the rental unit), 62 (order that the Landlord comply), and the other relief sought under the *Act* are only relevant should the tenancy continue such that they may be dismissed with or without leave to reapply depending on whether the 10-Day Notice is upheld or cancelled.

The hearing proceeded strictly on the enforceability of the 10-Day Notice and the associated issue of unpaid rent.

Preliminary Issue – Style of Cause

Policy Guideline #43 provides guidance on the naming of parties and specifies that parties are to name themselves using the correct spelling of their legal names. In this instance, the tenant's application names H.K. as the landlord whereas the Landlord names itself as a corporate entity in its application. The tenancy agreement provided lists the corporate entity as the Landlord and A.I. and H.S. as co-tenants.

I enquired with the Landlord's agents who the correct the Landlord was and was advised that the corporate entity is. I proposed amending the tenant's application to reflect this and no one took issue with me doing so. Accordingly, I amend the style of cause such that the parties are named as spelt in the tenancy agreement.

Issue to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to a monetary order for unpaid rent?
- 4) Is the Landlord entitled to a monetary order for compensation?
- 5) Is the Landlord entitled to its filing fee?

Evidence and Analysis

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 parties confirm the following details with respect to the tenancy:

- The tenants moved into the rental unit on June 1, 2022.
- Rent of \$2,100.00 is due on the first day of each month.
- The tenants paid a security deposit of \$1,050.00 and a pet damage deposit of \$200.00 to the Landlord.

I am provided with a copy of the tenancy agreement which confirms these details.

Enforceability of the 10-Day Notice

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

The Landlord's agent C.M. advised that the tenants were served with the 10-Day Notice by having it posted to their door on December 9, 2022. The Tenant confirms receipt of the 10-Day Notice on December 9, 2022. I find that the Landlord served the 10-Day Notice in accordance with s. 88 of the *Act* and that it was received on December 9, 2022.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me by the parties. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The Landlord's agent advises that the tenants were short on rent in November 2022 December 2022 totalling \$799.61. The Landlord's agents further advise that the Landlord's received rent of \$450.00 in January 2023, February 2023, March 2023, and April 2023 such that the balance, being \$1,650.00, is left owing for each month.

The Tenant confirms that the accounting provided by the Landlord with respect to unpaid rent is accurate. The Tenant argues that her co-tenant, H.S., was responsible for paying the \$799.61 listed in the 10-Day Notice and that, instead of doing so, he filed the application disputing the 10-Day Notice. She says this was done without her knowledge. According to the Tenant, they had \$800.00 to pay toward rent in December 2022 but did not do so as they were under the belief that by filing the dispute the 10-Day Notice the issue of rent payment was "frozen".

As per the guidance in Policy Guideline #13, co-tenants are jointly and severally liable for the payment of rent. In other words, A.I. and H.S. are both responsible for paying rent in full to the Landlord. It is no excuse to say my co-tenant did not pay his portion of the rent. Both co-Tenants share the responsibility of ensuring the Landlord receives the full rent payment.

Further, the *Act*, Regulation, and Policy Guidelines do not stipulate that a tenant's obligation to pay rent under the tenancy agreement is somehow suspended pending a dispute before the Residential Tenancy Branch. To the contrary, s. 26(1) of the *Act* clarifies, strongly in my view, that a tenant must pay rent even when a landlord has failed to comply with the *Act*, tenancy agreement, or Regulations.

I find that the Landlord has established that the 10-Day Notice was properly issued. The Tenant's application to cancel the 10-Day Notice is hereby dismissed without leave to reapply.

As the Tenants continue to reside within the rental unit, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within two days of receiving this order.

Landlord's Monetary Claims

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or

the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlord seeks amounts accrued after filing their application. I permit the Landlord to do so in accordance with Rule 4.2 of the Rules of Procedure as the increased arrears could be reasonably anticipated by the Tenants.

In this instance, I have little difficulty finding that the Tenants breached their obligation to pay rent due under the tenancy agreement in contravention of s. 26 of the *Act*. There is no dispute that the total unpaid rent is as follows:

December 2022	\$799.61
January 2023	\$1,650.00
February 2023	\$1,650.00
March 2023	\$1,650.00
<u>April 2023</u>	<u>\$1,650.00</u>
TOTAL:	\$7,399.61

I find that the Landlord has demonstrated its claim for unpaid rent in the amount of \$7,399.61, which could not have been mitigated as the Tenants continue to reside within the rental unit.

The Landlord also seeks NSF charges and an insurance fee the Tenants have failed to pay under the tenancy agreement. Review of the tenancy agreement shows that under clause 7, which is initialled by the Tenants, the Landlord may charge a \$25.00 NSF fee in the event of late payment or returned cheques. The Landlord's agents advise that the Landlord is seeking this fee for the months of January to April 2023.

The Tenant argued that the NSF charges resulted from her mistaken belief that the dispute froze her rent obligation to the Landlord. The Tenant also advised that she had \$50.00 charge from the bank following each month the Landlord attempted to deposit rent and were unable to do so.

I find that the Landlord has established its entitled to the NSF fees under clause 7 of the *Act*. I further find that it has quantified its claim of \$100.00, which could not have been mitigated under the circumstances.

With respect to the insurance fee, the Landlord's agents direct me to an insurance lease addendum and the tenancy agreement. The tenancy agreement lists a \$20.00 fee for insurance was added to rent, which the agents tell me was reduced to the \$18.00 on March 1, 2023. The Tenant confirms signing for tenant's insurance through the Landlord and the fee to be paid each month.

I find that the Landlord has established the Tenants have breached their obligation to pay the insurance fee in contravention of the tenancy agreement. I further find that the Landlord has quantified the claim in the amount of \$76.00.

I find that the Landlord has established a total monetary claim totalling \$7575.61 (\$7399.61 (Unpaid rent) + \$100.00 (NSF fee) + \$76.00 (Insurance fee)).

Added to this amount is the Landlord's filing fee of \$100.00, which I find the Landlord is entitled to under s. 72(1) of the *Act* as it was successful in its application.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit and pet damage deposit in partial satisfaction of the total amount owed by the Tenants, which including interest totals \$1,257.61 (\$1,050.00 (security deposit) + \$200.00 (pet damage deposit) + \$7.61(interest)).

Combining the amounts above, I find that the Landlord is entitled to a total monetary award of **\$6,418.00** (\$7,575.61 + \$100.00 - \$1,257.61).

Conclusion

I dismiss the Tenants' application cancelling the 10-Day Notice without leave to reapply.

The Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

Of the Tenants' claims severed under Rule 2.3 of the Rules of Procedure, I dismiss the following with leave to reapply: ss. 33 and 67 (compensation for emergency repairs), 67 (compensation), 65 (past rent reduction). The remainder, being the claims under ss. 32 (repairs), 70 (allow access to the rental unit), 62 (order that the Landlord comply), 65 (future rent reduction), and the other relief sought under the *Act*, are dismissed without leave to reapply as the tenancy is over.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenants pay **\$6,418.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do 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.

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 24, 2023

Residential Tenancy Branch