



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR, CNL, MNRT, MNDCT, RR, OLC, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On December 10, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice");
- b. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice");
- c. compensation for the cost of emergency repairs they made during the tenancy;
- d. compensation for monetary loss/other money owed;
- e. a reduction in rent for repairs agreed upon but not provided;
- f. the Landlord's compliance with the legislation and/or tenancy agreement;
- g. for reimbursement of the Application filing fee.

The Landlord filed an Application, joined to the Tenant's initial Application, on January 22, 2023, for:

- g. an Order of Possession in line with the 10-Day Notice;
- h. compensation for unpaid rent;
- i. reimbursement of the Application filing fee.

Concerning the same tenancy, the Landlord's Application was joined at the Residential Tenancy Branch to that of the Tenant already in place. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on April 20, 2023. Both parties attended the teleconference hearing.

At the beginning of the hearing, the Landlord confirmed they received the Tenant's Notice of Dispute Resolution Proceeding attached to their door in December. On March 21, 2023 they received the Tenant's further evidence package.

The Tenant confirmed they received the Landlord's Notice of Dispute Resolution Proceeding around early February by registered mail. They also received "two big packages" of evidence from the Landlord for this matter.

From what the participants provided at the start of the hearing, I am satisfied that each of them completed service to the other as required. The hearing thus proceeded as scheduled.

Preliminary Matter – unrelated issues

At the outset, I advised both participants of the immediate issues concerning the two Notices to End Tenancy issued by the Landlord. These are: a. the Two-Month Notice, and b. the 10-Day Notice.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . 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."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the other issues concerning compensation to the Tenant, listed above, items c. through f. By Rule 2.3, these issues are unrelated, and I amend the Tenant's Application to exclude these matters. The Tenant has leave to reapply on these other issues. This means they may file a new and separate application to address these issues, and this does not preclude proper consideration of these issues by another arbitrator.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the Two-Month Notice, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to a cancellation of the 10-Day Notice?

If the Tenant is unsuccessful on this piece of their Application, is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for their initial Application, pursuant to s. 72 of the *Act*?

Background and Evidence

In this section I set out only the evidence that is relevant to the issues and my finding in this matter, with my decision set out in the Analysis section below.

The Tenant and Landlord each provided a copy of the tenancy agreement in their evidence. This tenancy started on September 15, 2015, with the rent amount starting at \$750. The rent amount increased with a renewed agreement in July 2019 to \$810 per month, and then again in February 2022 to \$822. The parties both verified, as per the agreement, that the rent was payable on the 1st day of each calendar month.

In the hearing the Tenant described how they pay their rent. At the start of the agreement, they paid via cheque to the Landlord, then more recently it was e-transfer; however, they found that receipts from the Landlord for e-transfer were “not consistent.” They reverted back to cheque payments for their rent in January 2023, after informing the Landlord of this in November 2022. They began giving a series of cheques in advance, “one, two, or three months in advance.”

Typically, as described by the Tenant, they would write cheques ahead of time, notifying the Landlord approximately mid-month by email. The Tenant would put a cheque in an envelope and attach it to their own door, *i.e.*, that of the rental unit. The Landlord would then come to

pick up that rent cheque “a few days later”. The Tenant stated “it’s always available, but the Landlord sometimes doesn’t pick it up for 2 weeks.”

The Tenant stated they had a record of cheques they wrote to the Landlord, and the communication about making them available; however, this was not in their evidence for this hearing.

The Landlord confirmed that the Tenant would pay via e-transfer for the last three years. More recently, the Tenant was using a cheque to pay their rent once again. The Landlord stated the basic problem with the Tenant sometimes paying rent late, even notifying “sometimes after the due date”.

The Landlord pointed to their documented evidence of late rent payments, showing as follows:

- an image showing e-transfer payment of \$822 on May 5, 2022 –
- an image showing e-transfer payment of \$822 on June 10, 2022 –
- an image showing e-transfer payment of \$822 on July 11, 2022 –
- an image showing e-transfer payment of \$822 on August 6, 2022 –
- a message from the Tenant dated September 30, 2022, stating that they would deduct \$100 and \$569 “income loss” from the following month’s rent, this because of a prior decision from the Residential Tenancy Branch
- a record of an e-transfer dated October 1, 2022, showing the deposit of \$153 on that date
- a record of an e-transfer dated October 5, 2022, showing the deposit of \$569 on that date
- a record of an e-transfer dated December 3, 2022, for \$189 on that date
- a record of an e-transfer dated December 7, 2022, showing the deposit of \$633 on December 1, 2022
- image of a cheque dated December 20, 2022 for the amount of \$253, noting “amended Jan 2023 rent”
- an image of a message from January 10, 2023 from the Tenant: “amended Jan ’23 rent cheque in an envelope taped to my door”
- a message to the Tenant on January 12, 2023 thanking the Tenant for the January (attached image of December 20, 2022 for January 2023, for \$253) and February rent cheques (attached image of January 20, 2022, for February 2023 cheque for \$822) – the Landlord queried on “why the January payment is \$253 not the full rental \$822?”
- Images of cheques dated February 20, 2023 for \$822 (with note “March ’23 rent”); and March 20, 2023 for \$822 (for “Apr ’23 rent”)

The Landlord provided a ledger – titled “history of rental payment from [the Tenant] up to Apr 2023” – showing a record of the Tenant’s payment of rent over the last year:

Month and date rent was due	Date of partial payment(s)	Amount of partial payment(s) received	Balance rent owed
Apr 1,2023	Mar 20,2023	\$822.00	\$1,916.00
Mar 1,2023	Mar 5,2023	\$822.00	\$1,916.00
Feb 4,2023	Jan 20,2023	\$822.00	\$1,916.00
Jan 1,2023	Jan.10,2023	\$253.00	\$569.00
Jan 1,2023	Jan.4,2023	\$0.00	\$822.00
Dec.1,2022	Dec 7,2022	\$633.00	\$0.00
Dec.1,2022	Dec 3,2022	\$189.00	\$633.00
Nov.1,2022	Nov.1, 2022	\$822.00	\$0.00
Oct 1,2022	Oct 5,2022	\$569.00	\$0.00
Oct 1,2022	Oct 1,2022	\$153.00	\$569.00
Sep 1,2022	Aug 23,2022	\$822.00	\$0.00
Aug 1,2022	Aug 6,2022	\$822.00	\$0.00
<u>Jul</u> 1,2022	Jul 11,2022	\$822.00	\$0.00
Jun 1,2022	Jun 10,2022	\$822.00	\$0.00
May 1,2022	May 5,2022	\$822.00	\$0.00
Apr 1,2022	Mar 29,2022	\$822.00	\$0.00
Mar 1,2022	Mar2,2022	\$822.00	\$0.00
Feb 1,2022	Feb 1,2022	\$822.00	\$0.00

In the hearing the Landlord clarified that the exact amount of rent outstanding, as of the date of the hearing, was \$1,916.

In the record are three 10-Day Notices, issued by the Landlord as follows:

- served by the Landlord via email to the Tenant on December 2, 2022 for the full rent amount of \$822 due on December 1, 2022, giving the end-of-tenancy date of December 12, 2022 – a separate Proof of Service document has the witness observe the Landlord attach this to the door of the rental unit on December 2, 2022 – the Tenant challenged this 10-Day Notice through their Application on December 10, 2022
- served by the Landlord via registered mail to the Tenant on January 4, 2023 for the full rent amount of \$822 due on January 1, 2023, giving the end-of-tenancy date of January 20, 2023 --- this was the basis for the Landlord’s January 22, 2023 Application for an order of possession

- served by the Landlord attached to the rental unit door on April 3, 2023, for an accumulated rent owed amount of \$1,916, due on April 1, 2023, giving the end-of-tenancy date of April 3, 2023

In a written statement they prepared for this hearing, dated January 3, and amended February 14, the Tenant stated:

[The Landlord] has zero intent on complying as evidence by handing out eight additional (mostly inaccurate and/or invalid) eviction notices in the span of weeks without any bilateral dialogue – then threatens to pile on more like clockwork.

In the hearing the Tenant described receiving a total of nine end-of-tenancy notices from the Landlord in recent months.

Analysis

I find the basic terms of the tenancy agreement are plain in the evidence. That is a rent amount of \$822 payable on the 1st of each month. Additionally, the Tenant paid a security deposit of \$375 at the start of the tenancy.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a 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. The wording appears thus:

(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “if rent is unpaid on any day after it is due”. A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this tenancy, the Landlord issued the second One-Month Notice on January 4, 2023. I find the Landlord’s record is accurate with respect to payments made by the Tenant for the month of January 2023, precisely, the cheque dated December 20, 2022 for the amount of \$253, with a notification to the Landlord about that cheque on January 10, 2023 via email, as shown in the Landlord’s evidence (stating “amended January ’23 cheque in an envelope taped to my door”).

I find the evidence shows the Tenant breached s. 26 by not paying the correct amount of rent when required. The Tenant did not present evidence to show otherwise.

The Landlord served the 10-Day Notice to the Tenant on January 4, 2023 via registered mail. The evidence from the Landlord shows the registered mail was delivered to the Tenant on January 5. As per s. 90(a) of the *Act*, I deem the 10-Day Notice received by the Tenant on January 9 – that is, on the fifth day after it was mailed.

The 10-Day Notice specifies “You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online.” I find the Tenant did not pay the remainder of the rent by January 14, 2023, which is 5 days after deemed service of the 10-Day Notice. The Tenant did not amend their then-running Application to the Residential Tenancy Branch that they filed on December 10; however, more importantly they did not complete payment of their January 2023 rent owing to the Landlord.

In this instance, I do not accept the Tenant’s testimony that they would prepare the following month’s rent in advance, and notify the Landlord of that in advance. The evidence in this matter does not show that to be the case for the January 2023 rent. The Tenant did not complete payment of January 2023 within the required time limit after the Landlord issued the 10-Day Notice that they signed on January 4, 2023.

I find there was a pattern in place of the Tenant not paying rent on the first of each month as required. By s. 26, it is the Tenant’s responsibility to ensure that rent is paid as required by the tenancy agreement. For this January 2023 rent, I accept the Landlord’s evidence that the Tenant did not complete payment of January 2023 rent within 5 days as required after the Landlord issued the 10-Day Notice. I find the Landlord is justified in ending the tenancy in the manner set out in s. 46(1). Therefore, I conclude that the 10-Day Notice, as issued by the Landlord on January 4, 2023, is valid.

I find the Tenant did not have a right under the *Act* to deduct any part of, or all, of the rent amount. That right can only be set by order of an arbitrator through a dispute resolution proceeding, under s. 72(2) of the *Act*.

I dismiss the Tenant’s Application for cancellation of the December 2022 10-Day Notice. The Landlord applied in January 2023 based on the January 10-Day Notice, and I grant the Landlord an Order of Possession in line with their Application. Under s. 55 of the *Act*, when a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession. On my review, I find the January 10-Day Notice complies

with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession. The tenancy will end with the Landlord's service of this Order of Possession.

In their Application, the Landlord applied for rent amounts owing from the Tenant. At the time of hearing on April 20, 2023, this amount was \$1,916, as shown in the Landlord's evidence, reproduced above.

The *Rules of Procedure* Rule 4.2 allows for an amendment to an application at the hearing stage, "such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made".

In line with this, I amend the Landlord's Application, and I grant the Landlord \$1,916 for rent amounts owing. By s. 67 of the *Act*, I grant the Landlord an award for compensation of \$1,916 for rent amounts owing.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$1,916. After setting off the \$375 security deposit, there is a balance of \$1,541. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,541 as compensation for the rent amounts owing.

The validity of the separate 10-Day Notice issued by the Landlord in December is not at issue, nor is the separate Two-Month Notice issued by the Landlord. I cancel each of those documents and they are of no effect.

The Landlord was successful in this Application; therefore, I grant them reimbursement of the Application filing fee. Conversely, the Tenant was unsuccessful on their Application; therefore, I make no award for reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice and the Two-Month Notice, without leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$1,641, pursuant to s. 67 and s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will 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 s. 9.1(1) of the *Act*.

Dated: April 25, 2023

Residential Tenancy Branch