



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, PSF, LRE, OLC, CNR-MT, CNOP
OPR, OPL, MNRL-S, LRSD, FFL

Introduction

This hearing dealt with two an Applications for Dispute Resolution filed by the tenant under the *Residential Tenancy Act* (the “Act”). In the first application filed on July 6, 2023, the tenant sought:

- Cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (Two Month Notice);
- An order for the landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the landlord’s right to enter the rental unit; and
- An order for the landlord to comply with the Act, regulation, or tenancy agreement.

In the first application filed on August 16, 2023, the tenant sought:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- An extension to the time limit set out under section 46(4) of the Act for disputing the notice.

This hearing also dealt with a cross-application filed by the Landlords under the Act on August 10, 2023, seeking:

- An Order of Possession based on the Two Month Notice;
- An order of Possession based on the 10 Day Notice;
- Recovery of unpaid rent;
- Retention of the security deposit in partial repayment of unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 AM on October 20, 2023, and was attended by the tenant, their advocate, and the landlord V.P. (landlord), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The parties acknowledged receipt of each other's Proceeding Packages and evidence. No concerns regarding service were raised. I therefore found the parties sufficiently served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). The hearing proceeded as scheduled and the documentary evidence before me from the parties was accepted for consideration.

Preliminary Matters

In their Applications the tenant sought remedies under multiple unrelated sections of the Act. 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.

The tenant applied to cancel a 10 Day Notice and Two Month Notice, and the landlord sought enforcement of both notices. I therefore found that assessing validity and enforceability of the notices, and determining whether rent was owed, was the priority. I exercised my discretion to dismiss the following claims by the tenant with leave to reapply, as I found them not to be sufficiently related:

- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.
- An order for the landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the landlord's right to enter the rental unit; and
- An order for the landlord to comply with the Act, regulation, or tenancy agreement.

As I found the matter of the 10 Day Notice to be determinative in relation to possession of the rental unit, I also have only addressed below the matters relating to the 10 Day

Notice and outstanding rent. No findings of fact were made in relation to validity or enforceability of the Two Month Notice.

Issue(s) to be Decided

Is the tenant entitled to an extension to the time limit set out under section 46(4) of the Act for disputing the 10 Day Notice?

If so, is the tenant entitled to cancellation of the 10 Day Notice?

If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recovery of unpaid rent?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agree that \$850.00 in rent is due each month, that the tenant has not paid rent in four months, and that the tenant paid a \$425.00 security deposit, which the landlord still holds in trust. The tenant acknowledged at the hearing that none of the reasons under the Act for withholding rent apply, and their advocate argued that the tenant mistakenly believed they could withhold rent for the loss of services and facilities.

The landlord stated that the 10 Day Notice was posted to the door of the rental unit on July 31, 2023, and the tenant acknowledged receipt on either August 1, 2023, or August 2, 2023. The tenant acknowledged that the rent was not paid, and filed the application seeking an extension to the time limit for disputing the notice and cancellation of the notice on August 16, 2023.

The 10 Day Notice is on the Residential Tenancy Branch (Branch) form, contains the rental unit address, is signed and dated July 31, 2023, has an effective date of August 10, 2023, and states that as of July 26, 2023, \$850.00 in rent was due.

Analysis

I find that the tenant owes \$850.00 in rent each month under the tenancy agreement, and as acknowledged by the tenant at the hearing, that they did not have grounds under the Act to withhold rent. Although the tenant was served with a Two Month Notice, they disputed that notice. As a result, I find that the tenant was not entitled to withhold rent under section 51(1) of the Act. I am also satisfied that at the time the 10 Day Notice was served, the tenant owed the outstanding rent shown, as they agreed that as of the date of the hearing, they had not paid rent in four months.

I accept the tenant's testimony that the 10 Day Notice was received on either August 1, 2023, or August 2, 2023. Both dates are earlier than the applicable deemed service date. Using the latest possible date above, I find that the tenant was required to either dispute the 10 Day Notice or pay the rent owed by August 7, 2023, pursuant to section 46(4) of the Act. The tenant did neither.

Although the tenant sought an extension to the time limit set out in section 46(4) of the Act, they did not apply until August 16, 2023, which is past the corrected effective date of the 10 Day Notice, August 12, 2023. Section 66(3) of the Act states that I cannot extend the time limit to dispute a notice to end tenancy beyond the effective date of the notice. As a result, I did not hear testimony or submissions on whether to grant the tenant an extension under section 66(1), as I was statutorily prohibited from granting one.

I therefore dismissed the tenant's application seeking an extension under section 66(1) of the Act and cancellation of the 10 Day Notice, without leave to reapply. As a result, and as I am satisfied that the 10 Day Notice complies with section 52 of the Act, I therefore find that the landlord is entitled to an Order of Possession under section 55(1) of the Act.

As the corrected effective date of the 10 Day Notice had passed, I heard from the parties on when the Order of Possession should be effective. The tenant and their advocate requested that they be given until at least October 31, 2023, to vacate. The landlord requested an Order of Possession as soon as possible and not later than October 28, 2023. Pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #54, I have considered the requests of both parties, as well as the circumstances. I find an Order of Possession dated 1:00 PM on October 31, 2023, reasonable and appropriate under the circumstances. I do not find it appropriate to go beyond this date as the tenant has not paid rent in 4 months. I therefore grant the landlord an Order of

Possession for 1:00 pm on October 31, 2023, and I order the tenant to vacate the rental unit by that date and time.

Pursuant to sections 55(1.1) of the Act, I also grant the landlord recovery of four months rent up to and including October 31, 2023, in the amount of \$3,400.00. I permit the landlord to retain the tenant's \$425.00 security deposit in partial satisfaction of this amount pursuant to section 72(2)(b) of the Act. I also grant the landlord recovery of their \$100.00 filing fee under section 71(1) of the Act, as they sought recovery of unpaid rent and enforcement of the 10 Day Notice in their own application, and I have granted both.

Pursuant to section 67 of the Act, I therefore grant the landlord a Monetary Order in the amount of \$3,075.00 and I order the tenant to pay this amount to the landlord.

Conclusion

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the landlord effective at **1:00 P.M. on October 31, 2023, after service of this Order** on the tenant. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$3,075.00**. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: October 20, 2023

Residential Tenancy Branch