



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC-MT

Landlord: OPR, OPC, MNRL, MNDCL, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- more time to cancel the One Month Notice, pursuant to section 66.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord amended the above claim on October 11, 2023 to include:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67; and
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to retain the tenants' security deposit, pursuant to section 38.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision and orders.

Preliminary Issue – Service

The landlord confirmed receipt of the tenant's application for dispute resolution on July 16, 2023. I find that the landlord was sufficiently served for the purposes of this Act in accordance with section 71 of the Act with the tenant's application for dispute resolution. Both parties agree that the tenant did not serve any evidence on the landlord. The only evidence uploaded by the tenant to the residential tenancy branch is a copy of the One Month Notice, and a proof of service document pertaining to the service of the tenant's application for dispute resolution.

The landlord testified that the tenant was served with her application for dispute resolution and evidence by posting on July 15, 2023. The tenant confirmed receipt of the above. I find that the tenant was sufficiently served for the purposes of this Act in accordance with section 71 of the Act with the landlord's application for dispute resolution and evidence because receipt was confirmed.

The landlord testified that the tenant was served with the amendment to this application and a second evidence package via posting on October 11, 2023. The tenant testified that he received the above documents on October 11, 2023. I find that the tenant was served with the amendment and second evidence package in accordance with section 88 of the Act.

The landlord testified that a third evidence package was served on the tenant on October 20, 2023. The tenant testified that he received the third evidence package on October 20, 2023. I find that the landlord's third evidence package was not served on the tenant at least 14 clear days before this hearing in accordance with the Rules of Procedure. I find that the admittance of the landlord's late evidence would prejudice the tenant who was not provided with a full opportunity to respond to the late evidence which was served only five clear days before this hearing. The landlord's third evidence package is excluded from consideration.

The landlord's application for dispute resolution states a shortened version of the tenant's first name. The tenant's application states the long version of the tenant's first name. Pursuant to section 64 of the Act I amend both applications to list both versions of the tenant's first name.

Issue to be Decided

1. Is the tenant entitled to more time to cancel the One Month Notice?
2. Is the tenant entitled to cancellation of the One Month Notice?
3. Is the landlord entitled to an Order of Possession for cause?
4. Is the landlord entitled to recover the filing fee for this application from the tenant?
5. Is the landlord entitled to an Order of Possession for Unpaid Rent?
6. Is the landlord entitled to a Monetary Order for damage or compensation under the Act?
7. Is the landlord entitled to a Monetary Order for unpaid rent?
8. Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

While I have turned my mind to the presented documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- the tenant moved in on May 20, 2023
- monthly rent in the amount of \$1,400.00 is payable on the first day of each month
- a security deposit of \$700.00 was paid by the tenant to the landlord on April 25, 2023
- the tenant lives in a garden suite in a house and the landlord lives in the suite above the tenant

A written tenancy agreement and addendum was signed by both parties and a copy was submitted for this application. The tenancy agreement addendum states that the tenant is responsible for 1/3 of the electricity bill.

The landlord testified that the One Month Notice was posted on the tenant's door on June 21, 2023. The landlord entered into evidence a signed affidavit of service for same. The tenant testified that he received the One Month Notice but could not recall on what date. The One Month Notice was entered into evidence, is signed by the landlord, is dated June 20, 2023, gives the address of the rental unit, states that the effective

date of the notice is July 31, 2023, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The tenant filed to dispute the One Month Notice on July 6, 2023. The tenant testified that he does not remember why he filed his application for dispute resolution more than 10 days after receiving the One Month Notice. The tenant testified that the reason he filed late is in his evidence, but he does not remember why he filed late. The tenant's application for dispute resolution states:

I have sent my application on time but I got email I didn't notice that the RTB asking for income prove for viewing the \$100 dollars.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted to the tenant's door on September 17, 2023. The tenant testified that he received the 10 Day Notice but could not recall when. The 10 Day Notice was entered into evidence, gives the address of the rental unit, states that the effective date of the notice is September 30, 2023, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy:

- The tenant has failed to pay rent in the amount of \$700.00

The copy of the 10 Day Notice entered into evidence by the landlord is not signed or dated. The landlord testified that the copy of the 10 Day Notice she gave to the tenant was signed and dated. The tenant testified that the copy of the 10 Day Notice he received was signed and dated by the landlord.

Both parties agree that the tenant only paid \$700.00 towards September 2023's rent and has not paid any rent for October 2023. The landlord is seeking unpaid rent for September and October 2023. The tenant testified that he has not paid rent because the landlord, who lives above him, has been making noise and disturbing him. The tenant did not file to dispute the 10 Day Notice.

The landlord testified that the tenant did not pay his 1/3 share of the last electricity bill and owes \$70.58. The landlord entered into evidence an electricity bill for the subject

rental house for the billing period of July 27, 2023 to September 26, 2023 in the amount of \$211.76.

The tenant testified that while he agreed to pay 1/3 of the electricity bills at the start of this tenancy, he no longer thinks that this is a fair split of the electricity costs because the landlord uses air conditioning in the summer, and he doesn't frequently use his portable air conditioner. The tenant agreed that he did not pay the landlord for the July 27, 2023 to September 26, 2023 electricity bill.

Analysis

Based on the testimony of the landlord and the signed affidavit of service, I find that the One Month Notice was posted on the tenant's door on June 21, 2023, in accordance with section 88 and 90 of the Act. I find that the tenant was deemed served with the One Month Notice on June 24, 2023. The tenant failed to dispute the One Month Notice on July 6, 2023, 12 days after being deemed to have received the One Month Notice. Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the Act.

Section 66 of the Act states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. According to Policy Guideline # 36 the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The tenant's written submissions state:

I have sent my application on time but I got email I didn't notice that the RTB asking for income prove for viewing the \$100 dollars.

The tenant was not able to elaborate on the reasons set out above. It appears that the tenant filed a previous application for dispute resolution and applied for a fee waiver but did not provide the required fee waiver documents. Rule 2.6 of the Residential Tenancy Branch Rules of Procedure states that an application is considered to have been made once the fee waiver documents are submitted or the filing fee is paid. The three-day

period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application. After three days without receiving payment or the fee waiver documents the tenant's first application was considered abandoned. The tenant filed this application after his original application was marked abandoned.

I find that the tenant has not proved, on balance of probabilities, that his failure to submit the required fee waiver documents on time in the previous application was due to an exceptional circumstance. Failing to monitor your email account does not count as an exceptional circumstance. I therefore decline to extend the time limit to dispute the One Month Notice.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being July 31, 2023. Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to an Order of Possession. Orders of possession past the effective date of the One Month Notice are usually effective two days after service. The tenant testified that he has not found a new place to live yet. The landlord testified that she is willing to allow the tenant to stay until November 4, 2023. Taking into consideration both the short duration of this tenancy and the difficulty in moving out two days after service, I find that an effective date of November 4, 2023 to be reasonable in the circumstances.

The landlord will be given a formal Order of Possession effective at 1:00 p.m. on November 4, 2023 which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on November 4, 2023, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Based on the testimony of both parties I find that the tenant was deemed served with the 10 Day Notice on September 20, 2023, three days after its posting, in accordance with section 88 and 90 of the Act. I accept the testimony of both parties that the 10 Day Notice was signed and dated by the landlord. Based on my review of the 10 Day Notice entered into evidence and the testimony of the parties, I find that the 10 Day Notice served on the tenant meets the form and content requirements of section 52 of the Act.

Based on the undisputed testimony of both parties I find that the tenant failed to pay the outstanding rent stated on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by September 30, 2023 as that has not occurred, I find that in addition to my findings regarding the One Month Notice, the landlord is also entitled to an Order of Possession pursuant to the 10 Day Notice.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. Pursuant to section 26(1) of the Act, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,400.00 on the first day of each month. Based on the testimony of the parties I find that the tenant did not pay rent in accordance with section 26(1) of the Act and owes the landlord \$2,100.00 in unpaid rent for September and October of 2023. I note that the tenant was not permitted under the Act to withhold rent because of alleged noise made by the landlord. I find that had the conclusive presumption not applied, the landlord would still be entitled to an Order of Possession pursuant to the 10 Day Notice on its merits.

I note that the tenant is required to pay the landlord a per diem amount for rent/overholding from November 1-4, 2023. If the tenant does not pay the per diem amount for rent/overholding, the landlord is at liberty to file an application for dispute resolution seeking those damages.

The tenancy agreement addendum signed by the tenant clearly states that the tenant is required to pay 1/3 of the electricity bill. I find that the tenant is bound by that agreement. The tenant was not forced to sign the agreement but elected to do so and

pursuant to the tenancy agreement is responsible for 1/3 of the electricity bills. The tenant is not permitted to change his mind based on a perceived unfairness. I note that the division of the bill is not grossly unfair or unconscionable because the landlord is paying the majority of the bill. In accordance with section 67 of the Act I award the landlord 1/3 of the electricity bill entered into evidence in the amount of \$70.58.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$700.00 in partial satisfaction of the landlord's monetary claim.

I accept the landlord's testimony that the security deposit was received on April 25, 2023. I find that the interest accrued from April 25, 2023 to the date of this hearing, October 26, 2023 is \$6.92. I find that the landlord is entitled to retain the interest accrued on the tenant's security deposit in partial satisfaction of the landlord's monetary claim.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
September 2023 rent	\$700.00
October 2023 rent	\$1,400.00
Electricity bill	\$70.58
Filing fee	\$100.00
Less security deposit	-\$700.00
Less security deposit interest	-\$6.92
TOTAL	\$1,563.66

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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 4, 2023**, which should be served on the tenant.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 26, 2023

Residential Tenancy Branch