



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenants filed their application on August 25th, 2023, and seeks the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the “Notice”).
- Compensation from the Landlord for monetary loss or other money owed.
- An order for the Landlord to make repairs to the Rental Unit.
- A request to suspend or set conditions on the Landlord’s right to enter the Rental Unit.
- An order to the Landlord to comply with the *Act*, *Regulation* or Tenancy Agreement.
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on August 30th, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent and authorization to retain the Tenant’s security deposit and/or pet damage deposit.
- Authorization to recover their filing fee from the Tenants.

The Tenant acknowledged being served with the Landlord’s application and evidence by registered mail. The Landlord acknowledged being served with the Tenant’s application but testified that they never received the Tenant’s evidence. The Tenant acknowledged that they never served the Landlord with their evidence.

I reviewed the Tenant’s unserved evidence for relevance and accepted oral testimony from the Tenant. While the Landlord was not served, I find that its inclusion does not unreasonably prejudice the Landlord or result in a breach of the principles of natural justice. During the hearing I explained the contents of the Tenant’s evidence to the Landlord. The Landlord did not raise issues regarding prejudice.

I find that not all the claims in the Tenant's application are sufficiently related to be determined during these proceedings. I also note that the Tenant has failed to provide evidence to support their claims. Therefore, I will only consider the Tenant's request to set aside the 10 Day Notice. The balance of the Tenant's application is dismissed, with leave to reapply.

Background and Evidence

The Landlord did not recall the start date of the tenancy. The Tenant testified that the tenancy commenced on March 15th, 2021, with rent being due on the first of every month. The parties agreed that the monthly rent is currently \$1,122.00 and that the Landlord is currently holding \$1,100.00 in security and pet damage deposit.

The parties agreed that the Tenant has not paid any rent in August 2023, September 2023, and October 2023. In addition, the Landlord testified that they have a Monetary Order for unpaid rent against the Tenant, in the amount of \$3,366.00, for the months of May 2023, June 2023, and July 2023.

The previous dispute and hearing

The parties testified that the same issues that led to the previous dispute are still ongoing. A Residential Tenancy Branch arbitrator issued a decision regarding the previous dispute on August 15th, 2023 (the "Previous Dispute"), following a hearing which took place on July 24th, 2023 (the "Previous Hearing").

The parties agreed that, since the Previous Hearing, the Tenant has paid the Landlord \$1,200.00.

I have reviewed the Previous Decision. The arbitrator in the Previous Decision canceled the Landlord's previous 10-Day Notice to End Tenancy, issued on May 22nd, 2023, because they found that the Landlord was partly to blame for the Tenant's inability to pay their May 1st, 2023. However, the arbitrator granted the Landlord a Monetary Order in the amount of \$3,366.00 for unpaid rent and stated the following:

"The Tenant agrees they owe that amount and says they have those funds available. The Tenant was provided with instructions at the hearing for how to pay, and no longer has a valid reason not to pay rent.

I grant the Landlord a monetary order for \$3,366.00. Should the Tenant fail to pay the rent as I have ordered, the Landlord is at liberty to issue a new 10 Day Notice."

The current dispute

The Landlord issued the 10-Day Notice for Unpaid Rent, which led to the current dispute, on August 16th, 2023, by attaching the same to the door of the Rental Unit. The Tenant acknowledged receipt of the Notice on August 18th, 2023. The Landlord has cited unpaid rent in the amount of \$3,376.00, due on August 1st, 2023, as the reason for issuing the Notice.

The Tenant testified that, during the Previous Hearing, the Landlord provided them with the name of a corporate entity and an account number ending in 1528 and asked the Tenant to deposit their rent directly into this account number. The Landlord confirmed that the account number and the corporate name (the "Corporate Name") testified to by the Tenant were the same as what they provided to the Tenant. They further testified that the Tenant has the option of paying them in any way they like and that they never informed the Tenant that they cannot pay using other methods.

The Tenant testified that they went to their bank on August 24th, 2023, with a bank draft, issued to the Corporate Name and the account number provided to them by the Landlord (the "Bank Draft"). The Tenant has submitted a copy of the Bank Draft as evidence. The Bank Draft is stamped August 24th, 2023, and is in the amount of \$1,483.00.

The Tenant testified that they were informed by their bank that the account number ending in 1528 does not match the Corporate Name stated on the Bank Draft and that the deposit will likely "bounce". The Tenant did not deposit the Bank Draft. The Tenant also testified that they intended to deposit the balance of their rental arrears with the cash that they had on them on August 24th, 2023. The Tenant then withheld their August to October 2023 rent for the same issue and did not use any other methods of payment.

The Landlord testified that the account number ending in 1528 is an account used by two different companies belonging to the Landlord and had the Tenant deposited the funds on August 24th, 2023, the payment would have gone through. The Landlord testified that if the Tenant wished to pay their rent, they could find the way to do so, including paying the Landlord in cash or by leaving their rent cheque in a black deposit box located in the lobby of the building in which the Rental Unit is in (the "Black Box"). The Landlord testified that they have provided the same account number and name combination to other tenants of theirs and their deposits come on time without any issues.

The Tenant's witness, J.S., who introduced themselves as a neighbour of the Tenant, testified that they pay their rent to the Landlord by leaving a bank draft in the Black Box every month. The Tenant testified that they were unaware of the Black Box, and they did not know that they could pay the Landlord by this method. The Landlord disputed the Tenant's testimony and testified that they informed the Tenant, during the Previous Hearing, that they could pay their rent by leaving personal cheques or bank drafts in the Black Box.

The Tenant disputed the Landlord's testimony and testified that, during the Previous Hearing, the arbitrator asked the Landlord to send the Tenant a text message with the Landlord's account number. The Tenant then read the text message verbatim, sent by the Landlord after the Previous Hearing:

Tenant: "Hello [Landlord], can you please tell me how you want me to give you your money, do you want the cheques in that box and can you give me the account number for the future payments please."

Landlord: "***-***1528 [company name]"

(the "Text Message").

Analysis

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I accept the Landlord's testimony that the Tenant was informed of the Black Box during the Previous Hearing and of the fact that the Tenant could pay their rent by either depositing their rent directly into the Landlord's account or by leaving their cheques in the Black Box.

The Text Message is clear indication that the Tenant was at least aware of the Black Box. In the Text Message, the Landlord provides the Tenant with their banking information, which the Tenant has testified is incorrect. I accept their testimony that a staff member at their bank informed them that the information is incorrect. But I also accept the Landlord's explanation that they use the same account number for two different companies.

On August 24th, 2023, following the failed attempt to deposit the Bank Draft, the Tenant did not contact the Landlord and they did not deposit their rent in the Black Box, an

acceptable method of payment. In the Text Message, the Landlord never excluded the Black Box as an option. I find that the Tenant simply chose not to use the Black Box, which is not a valid reason not to pay rent.

Section 46 of the Act states that a landlord may issue a 10 Day Notice to End a Tenancy if rent remains unpaid after the day rent is due. I find that the Notice complies with the form and content requirements of section 52 of the Act because: it gives valid grounds for issuing the Notice and has been completed correctly.

Order of Possession

The Tenant's application to cancel the Notice is dismissed and the Landlord is entitled to an Order of Possession.

I have discretion to extend the effective date of the Order of Possession in cases when the tenant identifies a need to be accommodated for disability.

I order the tenancy ends 21 days from the date the Tenant receives of the Order of Possession from the Landlord. This is in keeping with the recent BC Supreme Court decision of *Ball v Bedwell Bay Construction Ltd.*, 2023 BCSC 1470 (paragraph 72).

Monetary Order

The Landlord is entitled to a Monetary Order for \$3,366.00 in unpaid rent, for rental arrears from August to October 2023, in accordance with section 55 of the *Act*. In addition, the Landlord has applied to retain the Tenant's security deposit and to recover \$88.00 in rent increases from January to March 2023 (the "Rent Increases"). In the Previous Decision, the arbitrator denied the Landlord's request for the Rent Increases without leave to reapply and, therefore, I decline to grant the Landlord this amount.

I also note that the Landlord is already in possession of a Monetary Order for rental arrears from prior to August 1st, 2023. Therefore, I decline to provide the Landlord with a second monetary order covering the same period.

The Landlord is ordered to retain the Tenant's \$1,100.00 aggregate deposit, along with accrued interest, in the amount of \$17.15 (calculated from March 15th, 2021, to October 18th, 2023), in partial satisfaction of the Monetary Order.

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the *Act*.

Conclusion

The Tenants' application to cancel the Notice is dismissed, without leave to reapply. The balance of the Tenant's application is dismissed with leave to reapply. The Landlord is granted an Order of Possession, effective 21 days after service of the attached Order to the Tenant. The Landlord is granted a monetary under the terms set out below:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and for damages incurred.	\$3,366.00
Less security deposit and accrued interest.	\$1,117.15
Filing fee.	\$100.00
Total Amount	\$2,348.85

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 18th, 2023

Residential Tenancy Branch