



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNR DRI ERP PSF RP FF

Introduction

This hearing was convened in response to an application by the tenant for an Order to set aside a Notice to End Tenancy for Unpaid Rent (the Notice to End). As the tenant filed their application in this respect later than prescribed by the Act the tenant applied for more time to make this application. The tenant further applied for repairs to the unit and services or facilities required by the tenancy agreement or the law, as well as disputing an additional rent increase.

Both parties participated in the conference call hearing and each acknowledged receiving all of the evidence of the other.

Preliminary Matters

I heard from the tenant in respect to their request for *more time* to dispute the landlord's Notice to End pursuant to Section 46 of the Act. The tenant testified they are parent of a teenager with significant mental health issues occupying considerable time and that they filed their application as soon as possible. I considered the circumstances of the tenant as well as the provisions of Section 66 of the Act and determined to extend the time limit prescribed by Section 46(4) of the Act.

In relation to the remainder of the tenant's Application, it relates to requested repairs which the landlord purportedly has failed to make. I also note that the tenant's

rental unit is managed by BC Housing and the rent is related, or 'geared' to the tenant's income and is exempt by Regulation from the requirements / provisions related to rent increases. The tenant is not permitted to seek remedy to an increase of rent through the dispute resolution process.

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single application. As a result, I determined I would not deal with all the dispute issues placed on the tenant's application in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue. Therefore, I will solely deal with the tenant's request to cancel the notice and the remainder of the tenant's application is preliminarily dismissed with leave to re-apply.

Issues to be Decided

Is the 10 Day Notice to End tenancy for unpaid rent effective to end this tenancy?

Background and Evidence

This tenancy started in 2008. The rental unit is administered by the landlord managing subsidized housing, and as such the tenant's rent contribution is determined in relation to the tenant's income, as periodically reviewed. The parties agreed the rent contribution is currently \$395.00 per month and that rent is payable in advance on the first day of each month.

The tenant claims their rent contribution *prior to December 2015* was set at \$249.00 per month. The landlord provided evidence that *as of December 2015* the tenant had accumulated arrears of \$1271.00 which in fractional part consisted of an obligation to pay historical arrears under a repayment agreement at \$25.00 each month as well as the payable rent, as periodically determined. Both parties acknowledged there have been payments made in March and April 2016 totalling \$300.00. Otherwise, the parties agreed the tenant last paid rent of \$249.00 for the month of November 2105.

On August 03, 2016 the landlord served the tenant with the Notice to End for unpaid rent indicating the tenant owed total rent arrears of \$4526.00 to August 2016. The landlord provided evidence of the tenant's rent history as of May 2014 showing the progression of owed rent contributions and the tenant's shortfall payments in response, resulting in the arrears. The tenant generally disputes the landlord's accounting claiming the landlord has not adequately communicated to them the amount of their rent obligation following the landlord's periodic reviews, or the tenant's request for review. The tenant claims they do not know the appropriate amount of their rent contribution each month. The landlord explained, generally, they apply an income means test to determine the tenant's subsidized rent.

Both parties acknowledged that over the past 2 ½ years the tenant has effectively provided, and the landlord has effectively received, all information required, requested and necessary for the landlord to validly determine the tenant's rent contributions moving forward, in accordance with the landlord's policies. The landlord provided evidence showing the tenant's rent contribution, as calculated, and correspondence communicating the information to the tenant. The tenant testified they only recently were provided written notification of the current payable rent contribution claimed by the landlord as payable since 2015, which the tenant claims they understood still to be \$249.00, since mid-2015. The landlord provided evidence of written and e-mail correspondence to the tenant communicating their rent contribution obligations, and of the accumulating arrears in rent, in September 2015, November 2015, February 2016 and July 2016. The tenant also provided evidence of written reminders of their rent contribution obligations, and of mounting arrears of rent starting in early 2016, inclusive of 10 Day Notices for Unpaid Rent in January 2016 (\$1200.00), and again February 2016 (\$1620.00).

Despite all the above the tenant testified that in their determination they currently owe "about half" the amount claimed by the landlord to be the arrears; and, have the ability to immediately satisfy such a reduced amount.

Analysis

In relevant part, Section 26 of the Act, states as follows.

Rules about payment and non-payment of rent

26 (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 or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

When a landlord alleges a tenant has not paid rent, the tenant bears the burden of proving that the rent has been paid or the attempts made to satisfy the rent, or they held the rent amount for their cost toward emergency repairs, or have an Arbitrator's Order authorizing they retain the rent. I find that the parties largely provided contrasting viewpoints respecting the payable rent contributions. I accept that until recently the tenant understood their rent contribution was last payable at the amount each month of \$249.00 rather than the agreed current amount of \$395.00. I also find the evidence of both parties is that the tenant was provided sufficient information over the past year informing the tenant of their obligation to pay rent and of mounting arrears. I am satisfied that the tenant knew or ought to have known they owed rent each month from December 2015 onward. I must also accept that in the tenant's opinion they owe the landlord approximately half of the landlord's greater claim which translates into an approximate amount of \$2200.00, and that they have current capacity to satisfy the amount. But moreover, despite all of the above, I find the tenant has effectively failed to satisfy rent for the past 10 months.

The undisputed evidence is that a significant amount of rent has not been paid since November 2015 and that a more profound amount exists in accumulated unpaid rent over the past 2 ½ years. I find the tenant has not proven the rent has been paid or they were legally authorized to withhold rent. As a result, I find the 10 Day Notice to End tenancy for unpaid rent is effective to end this tenancy. I therefore **dismiss** the tenants' application to set aside the Notice dated August 03, 2016 and under the provisions set out by Section 55(1) of the Act I must issue an Order of Possession. Accordingly, the landlord is given an **Order of Possession** effective **2 days from the**

day it is served on the tenant. If the landlord serves the tenant with the Order and the tenant fails to comply, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I do not have an application before me from the landlord requesting the unpaid rent.

In respect to the balance of the tenant's application it is available to the tenant to request retrieval of any evidence they submitted to this matter, if required for a future claim.

Conclusion

The tenants' application to set aside the landlord's Notice to End is **dismissed**.

The landlord is given an **Order of Possession**.

The balance of the tenant's application is dismissed, *with leave to reapply*.

This Decision is final and binding on both parties.

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: September 27, 2016

Residential Tenancy Branch