



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL, CNC, CNR, FFT, LAT, OLC, PSF

Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary award pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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

As both parties were present service was confirmed. While there was initially some confusion regarding which Notice to End Tenancy and which application for dispute resolution were served at what time, eventually both parties confirmed that they were served with all of the materials. Based on the testimony of the parties I find that the tenant was served with the 10 Day Notice, 1 Month Notice, application for dispute resolution and evidence in accordance with sections 88 and 89 of the Act. I find that the landlord was served with the tenant’s application and evidence in accordance with sections 88 and 89 of the Act.

During the hearing the landlord testified that the amount they are seeking has changed as there have been additional arrears and payments since filing their application. The landlord testified that the arrears amount as at the date of the hearing is \$1,308.09. As

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional amounts have come

due and some payments made and that the total arrears including rent and utilities owing as of the date of the hearing is \$1,308.09. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total arrears changing is reasonably foreseeable I amend the landlord's Application to update the landlord's monetary claim to \$1,308.09.

Issue(s) to be Decided

Should the 10 Day Notice or 1 Month Notice be cancelled? If not is the landlord entitled to an order of possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the tenant be authorized to change the locks to the rental unit?

Should the landlord be ordered to provide services or facilities required by law or the tenancy agreement?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the respective claims and my findings around each are set out below.

The parties agreed on the following facts. This fixed-term tenancy began in September, 2017. The monthly rent is \$1,100.00 payable on the first of the month. In addition the tenant is responsible for paying 2/3 of the utilities for the property. The landlord holds a security deposit of \$550.00 for this tenancy.

The landlord issued a written demand for utilities arrears in the amount of \$487.64 by a hand-delivered letter on January 2, 2018. A copy of the letter was submitted into evidence. The tenant confirmed receiving the letter on that date. The tenant did not make any payment against the arrears amount and the landlord issued the 10 Day Notice on February 1, 2018, 30 days after the written demand was made.

The tenant testified that he made an e-transfer of the arrears amount and the rent for February, 2018 in the amount of \$1,000.00 on February 1, 2018. The tenant submitted screenshots of the e-transfer showing the pending transfers into evidence. The landlord said that the tenant did not provide her with a working password to access the funds. The landlord said that the tenant first provided her with a password on February 7, 2018 but the password provided did not work.

On February 7, 2018, as the e-transfer did not complete the landlord requested the tenant make payment by another method. The tenant issued a cheque in the amount of \$1,487.64 on February 7, 2018.

The landlord testified that the payment by cheque was accepted for use and occupancy only and the tenant was informed that the landlord intended to proceed with her application for an order of possession. The landlord said that since issuing her application for dispute resolution there have been additional amounts for rent and utilities which have come due, some payments made accepted for use and occupancy only and that the total arrears as of the date of the hearing is \$1,308.09.

The tenant testified that he made all payments promptly. He submits that because he used the same password for e-transfer as in previous months the landlord ought to have been able to access the funds in a timely manner.

Analysis

Section 46(6) of the Act provides that when a tenant is required to pay the utility bills in a tenancy agreement and the utility charges are unpaid for more than 30 days after a written demand is made, the landlord may treat the unpaid utility charges as unpaid rent.

In the present case the parties confirmed that the landlord gave the tenant a written demand for the utility arrears of \$487.64 on January 2, 2018. As the utilities were unpaid 30 days after the written demand the landlord was entitled to issue the 10 Day Notice to end this tenancy.

Section 46(4) sets out that within 5 days of receiving a 10 Day Notice the tenant may either pay the full amount owing or dispute the notice by making an application for dispute resolution.

The tenant gave evidence that after being served with the 10 Day Notice dated February 1, 2018, he made full payment of the arrears amount along with the rent for the month of February, 2018 by e-transfer. The landlord testified that while they confirm receiving the notification of the e-transfer payment they were not provided with the requisite password to access the funds. The landlord said that they were first provided with a password on February 7, 2018 but the password provided on that day did not work. The landlord requested that the tenant make payment through alternate means. The tenant made a payment of \$1,487.64 consisting of rent of \$1,000.00 for February, 2018 and the utilities arrears of \$487.64 by a cheque dated February 7, 2018. The landlord testified that the payment was accepted for use and occupancy only and the tenant was informed that she was still pursuing an Order of Possession.

I find that sending notification of an e-transfer payment does not, in and of itself, comprise a payment. It is akin to informing a party that funds are available for pickup. While the tenant testified that the password set was the same as used in a previous month I do not find that to be sufficient. I find that when making payment by e-transfer there is an active onus on the party making the payment to inform the recipient of the password for each payment, not simply expect that a previous password will be utilized. Furthermore, I accept the landlord's testimony that the password provided by the tenant on February 7, 2018 did not allow for funds to be transferred.

Based on the evidence of the parties, I find that the payment for the utilities arrears was made on February 7, 2018, the date the tenant provided a cheque to the landlord. Therefore, I find that the tenant failed to pay the full utilities due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The 10 Day Notice issued by the landlord conforms with the form and content requirement of section 52 of the Act as it is dated and signed, identifies the parties, the rental unit and states the grounds for ending this tenancy, the utility arrears. As such I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the Notice has passed I issue an Order of Possession effective two (2) days after service.

As I have found that this tenancy ends by way of the 10 Day Notice I find it unnecessary to make a finding in regards to the 1 Month Notice or the remaining portions of the tenant's application which deal with relief relating to an ongoing tenancy.

I accept the landlord's testimony that the total arrears for this tenancy is \$1,308.09 and issue a monetary award in that amount.

As the landlord was successful in their application the landlord may also recover the \$100.00 filing fee for this application from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$550.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$858.09. which allows the landlord to recover the arrears for this tenancy and the filing fee for their application:

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.

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: April 6, 2018

Residential Tenancy Branch