



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence provided by the other party. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that I am satisfied that both parties have been sufficiently served with the notice of hearing package(s) and the submitted documentary evidence as per section 90 of the Act.

At the outset it was clarified with both parties regarding the tenant's request (OLC) was in fact a request for return of personal property (a vehicle). Extensive discussions were held in which it was discovered that the landlord was not in possession of the vehicle, but instead Sheriff Services via a closed Bailiff Company. The tenant was uncertain as to how the vehicle was seized by the original Bailiff Company. As such, I dismiss this portion of the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy originally began on July 1, 2016 on a fixed term tenancy ending on June 30, 2017 as per the submitted copy of the signed tenancy agreement dated July 5, 2016. Both parties agreed that subsequently verbal agreement was made beginning July 1, 2016 in which a month-to-month agreement was made for \$1,800.00 per month payable on the 1st day of each month. The rent was increased later to \$1,866.00 on July 1, 2017.

The tenant seeks an order cancelling the 10 Day Notice dated June 4, 2018.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$7,221.00 which consists of:

\$1,886.00	Unpaid Rent, March 2018
\$1,886.00	Unpaid Rent, April 2018
\$1,886.00	Unpaid Rent, May 2018
\$1,886.00	Unpaid Rent, June 2018
-\$243.00	Credit for Partial Payment made

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated June 4, 2018 on June 5, 2018 by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$7,221.00 that was due on June 1, 2018 and sets out an effective end of tenancy date of June 15, 2018.

Both parties confirmed that the tenant failed to pay rent for the months March 2018 to the date of this hearing. The tenant clarified that he has withheld rent in response to his vehicle being seized by the Bailiff Company. Both parties confirmed that the tenant was not in possession of permission from either the Residential Tenancy Branch or the Landlord to withhold rent.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that he was entitled to withhold rent as a result of a prior order from the Residential Tenancy Branch or permission from the landlord.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for the period March 2018 to August 2018. The tenant admits that he did not pay rent for this period of time.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued June 4, 2018 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on June 15, 2018, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that he has not paid rent as claimed for \$7,221.00 plus the additional \$3,772.00 for July and August of 2018 for a total of \$10,993.00. I find that the landlord is entitled to this amount. The landlord also having been successful is entitled to recovery of the \$100.00 filing fee. I issue a monetary order in the landlord's favour in the amount of \$11,093.00, to enable the landlord to recover unpaid rent from the tenant.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$11,093.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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: August 03, 2018

Residential Tenancy Branch