



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OT
 OPUM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on September 11, 2018. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on August 27, 2018, and other issues. The Landlord’s Application for Dispute Resolution was made on September 28, 2018. The Landlord applied to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on August 27, 2018, for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for their application.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on July 1, 2017. Rent in the amount of \$650.00 is to be paid by the first day of each month and that the Tenants paid the Landlord a \$312.50 security deposit at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that a written request to pay a utility bill had been sent to the Tenants in February 2018 and that a written demand to pay that same bill was sent to the Tenants on April 6, 2018. However, the Tenants have still not paid the outstanding bill as requested. The Landlord also testified that they issued a notice of rent increased to the Tenants in the amount of \$25.00, effective July 1, 2018; however, the Tenants have never paid the increased rent amount. The Landlord provided a copy of the written demand for payment of the outstanding utility bill and the notice of rent increase into documentary evidence.

The Landlord testified that on August 27, 2018, she issued the Notice to end the tenancy, with an outstanding rent amount of \$50.00 and an outstanding utility amount of \$328.34. The Landlord testified that the Tenants are currently outstanding \$100.00 in rent for July, August, September and October 2018 and the \$328.34 for the utility bill. The Landlord is requesting an order of possession to enforce the Notice and a monetary order for the outstanding rent and utilities. The Landlord provided a copy of the Notice to end tenancy into documentary evidence.

The parties agreed that as of the date of this hearing the Tenants had not paid the outstanding utility bill or the rent increase of \$25.00 per month for July, August, September and October 2018.

The Tenant testified that she had not paid the rent increase of \$25.00 per month as she had believed the Landlord had issued the notice too early. The Tenant also testified that she had received the demand to pay the outstanding utility bill from the Landlord. However, she does not have the money to pay that bill due to her limited income.

The Landlord testified that she is requesting an Order of Possession to enforce her Notice. However, she is willing to give the Tenant until October 31, 2018, to move out of the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants received the 10-Day notice on August 27, 2018, and did apply to dispute the Notice within the legislated timeline.

I have reviewed the notice of rent increase issued by the Landlord, and I find the notice is valid and in compliance with the Act.

I accept the testimony of both parties that the Tenants have not paid the outstanding rent and utilities as stated on the notice. I find that the Tenant has not provided any evidence to show that she had permission from the Landlords to withhold the rent, or that she had an order from this office allowing her to withhold any portion of the rent. Therefore, I find that the Tenants are in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenants' application to cancel the Notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on **October 31, 2018**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for July, August, September and October 2018, in the amount of \$100.00, and the outstanding utility bill in the amount of \$328.34.

As the Landlord has been successful in his application, I also find that the Landlord is entitled to recover their \$100.00 filing fee for this hearing.

I grant the Landlord a Monetary Order in the amount of \$528.34; consisting of \$100.00 in unpaid rent, \$328.34 in unpaid utility bills and \$100.00 for the recovery of the filing fee.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **October 31, 2018**. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$528.34**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: October 24, 2018

Residential Tenancy Branch