



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT, CNR, ERP

Introduction

This hearing dealt with cross applications filed by the Tenant. On August 20, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a Repair Order pursuant to Section 32 of the *Act*, and seeking to Recover the Filing Fee pursuant to Section 72 of the *Act*.

On September 14, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking an Emergency Repair Order pursuant to Section 62 of the *Act*, and seeking a Repair Order pursuant to Section 32 of the *Act*.

The Tenant attended the hearing with S.B. as his advocate. O.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with both Notice of Hearing packages by hand and the Landlord's agent confirmed that he received this. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing packages.

The Tenant advised that he served his evidence to the Landlord by hand on September 19, 2018. The Landlord's agent advised that he had received this evidence. As such, this evidence was considered when rendering this decision. The Landlord's agent stated that he served the Tenant their evidence by mail on October 3, 2018 and the Tenant advised that he did not have time to review this evidence. As such, I am not satisfied that the evidence has been satisfactorily served on the Tenant as it was late and not in accordance with Rule 3.15 of the Rules of Procedure. Consequently, this evidence was not considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Two Month Notice to End Tenancy for Landlord's Use of Property and the 10-Day Notice to End Tenancy for Unpaid Rent, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have either or both notices cancelled?
- If the Tenant is unsuccessful in cancelling one or both of the notices, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on November 1, 2016 and that rent is currently \$3,500.00 per month, due on the first day of each month. A security deposit of \$1,750.00 was also paid.

All parties agreed that the 10-Day Notice for Unpaid Rent was served to the Tenant by registered mail on September 4, 2018 and the Tenant confirmed that he received the Notice on September 9, 2018. This notice indicated that \$3,462.00 was outstanding on September 1, 2018. The Notice indicated that the effective end date of the Notice was September 20, 2018. The Tenant advised that he paid \$1,553.50 on September 12, 2018 and \$2,000.00 on September 14, 2018 and the Landlord's agent confirmed these payments. This notice was the first issue addressed.

All parties agreed that the Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenant by registered mail on August 1, 2018 and the Tenant confirmed that he received the Notice. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child;

or the parent or child of that individual's spouse)." The Notice indicated that the effective end date of the Notice is October 31, 2018. The parties provided testimony with respect to the reason on the Notice; however, the topic of a settlement was brought up by the parties.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10-Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that this notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10-Day Notice to End Tenancy for Unpaid Rent. Once this notice is received, the Tenant would have five days to pay the rent in full or to dispute the notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the 10-Day Notice to End Tenancy for Unpaid Rent on September 9, 2018. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on September 14, 2018, the Tenant must have made this Application or paid the outstanding rent by this day at the latest. However, the undisputed evidence is that the Tenant paid the rent in full on September 14, 2018. As such, I find that the 10-Day Notice to End Tenancy for Unpaid Rent of September 4, 2018 is cancelled and of no force or effect.

Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement

discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord's agent and the Tenant agreed as follows:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property of August 1, 2018 is cancelled and of no force or effect.
2. The Tenant and the Landlord's agent agreed that the Tenant will maintain possession of the rental unit but must vacate the rental unit by **March 31, 2019 at 1:00 PM**.
3. Rent will be paid in full for October, November and December 2018, and January and February 2019.
4. The Landlord will compensate the Tenant in the amount of one month's rent and the Tenant is permitted to withhold March 2019 rent in lieu.
5. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective **March 31, 2019 at 1:00 PM after service of this Order** on the Tenant.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the 10-Day Notice to End Tenancy for Unpaid Rent of September 4, 2018 is cancelled and of no force or effect.

Furthermore, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of August 1, 2018 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenant if necessary, effective **March 31, 2019 at 1:00 PM**. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be 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 12, 2018

Residential Tenancy Branch