



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FFT
 OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for the recovery of the filing fee. The Landlord applied for an Order of Possession based on a 10 Day Notice, a Monetary Order for unpaid rent, and for the recovery of the filing fee. The Landlord originally filed under the Direct Request process, but as the file was crossed with the Tenant’s application, both files were scheduled to be heard together at a participatory hearing.

The Tenant and an advocate (the “Tenant”) were present for the duration of the teleconference hearing, as was the Landlord. The parties confirmed that the Notice of Dispute Resolution Proceeding package for each application was served as required. The Tenant received copies of the Landlord’s evidence. The Tenant submitted both notices to end tenancy into evidence and therefore did not serve these on the Landlord. No further documentary evidence was submitted by the Tenant.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2018. Monthly rent is \$675.00, due on the first day of each month. The tenancy agreement was submitted into evidence and confirms the details of the tenancy.

The Landlord testified that a security deposit was due at the outset of the tenancy, but the Tenant was provided three months in which to pay the deposit. The Landlord stated that it was never paid. The Tenant testified that the security deposit amount requested by the Landlord was equal to one month rent, when it should have only been half a month rent.

The Landlord stated that she was not aware that the security deposit should not be more than half a month rent until she asked the Residential Tenancy Branch. Both parties agreed that the security deposit was not paid. The Landlord stated that it was never paid, while the Tenant stated that he attempted to pay half a month, but the Landlord did not accept this as she wanted \$675.00 for the security deposit.

On October 2, 2018, the Landlord served the Tenant with a 10 Day Notice by posting it on the Tenant's door. The Tenant confirmed receipt of the 10 Day Notice on October 2, 2018. The 10 Day Notice was submitted into evidence and states that \$675.00 was not paid as due on October 1, 2018. The effective end of tenancy date of the 10 Day Notice was October 12, 2018.

The Landlord has claimed for unpaid rent in the amount of \$675.00 for October 2018 and \$675.00 for November 2018, along with the security deposit of \$337.50, for a total monetary claim of \$1,687.50. The Landlord provided testimony that she has received no money towards October or November 2018 rent.

The Tenant stated that he attempted to pay rent for October 2018 on October 2, after receiving the 10 Day Notice. He submitted that he went to talk to the Landlord in person and pay in cash, but that the Landlord did not accept the money. The Tenant stated that the Landlord advised him that if he didn't have the full security deposit amount of \$675.00, he would have to move out by October 12, 2018.

The Tenant also referenced the text messages submitted in the Landlord's evidence. In a text message dated October 5, 2018, the Tenant asks the Landlord if she will accept half a month rent for the damage deposit, and the Landlord responds that he needs to pay everything in full.

On October 6, 2018, the Landlord sent a text to the Tenant stating that he needs to pay whatever he can towards the amount outstanding and that the rest will be sorted out later. The Landlord testified that she did not receive any amount towards October rent and that the Tenant did not come to her door to try to pay the rent. The Landlord stated that she had to contact the Tenant every month regarding paying the rent, as it was never paid as due on the first of each month. She submitted further text messages into evidence regarding rent payments throughout the tenancy.

The Landlord submitted that the Tenant would pay her cash, other than September 2018 when rent was paid by e-transfer.

The Landlord also served the Tenant with a One Month Notice on September 28, 2018 by posting it on his door. The Tenant stated that he received this notice on September 25, 2018.

The One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The effective end of tenancy date of the One Month Notice was stated as October 31, 2018.

The Tenant file an Application for Dispute Resolution to dispute both notices to end tenancy on October 5, 2018.

Analysis

Regarding the 10 Day Notice, I refer to Section 46(4) of the *Act*, which states that a tenant has 5 days in which to dispute the notice or pay the rent owing. As the 10 Day Notice was received by the Tenant on October 2, 2018, and he applied to dispute the notice on October 5, 2018, he applied within the time allowable under the *Act*.

In accordance with Section 46(1) of the *Act*, a landlord may serve a tenant with a 10 Day Notice if rent is unpaid on any day after it is due. As the parties were in agreement that rent for October 2018 was not paid as due on October 1, 2018, I find that the Landlord was in compliance with the *Act* through issuing a 10 Day Notice.

However, the Tenant claimed that he attempted to pay the rent within 5 days of receiving the 10 Day Notice, in accordance with Section 46(4). The Landlord was not in agreement that he attempted to pay the rent.

A text message exchange on October 5, 2018, shows that the Landlord asked the Tenant to pay the money owing in full. However, I have no evidence before me that the Tenant tried to provide cash to the Landlord on October 2, 2018 after receiving the 10 Day Notice.

A text message on October 6, 2018 from the Landlord asks the Tenant to pay any money towards the rent owing that he is able to pay, which would have still been within the 5-day timeframe. However, based on the evidence before me, it seems that no further attempts to pay the rent owing were made.

I also accept that there was a dispute over the amount of security deposit owing. Regardless of the security deposit, I refer to Section 26(1) of the *Act* which states the following:

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.

The 10 Day Notice stated that rent in the amount of \$675.00 was outstanding and did not address the security deposit. Regardless of a dispute over the amount of security deposit that was to be paid, rent was due on October 1, 2018.

The Tenant had 5 days to pay the rent owing after receiving the 10 Day Notice, which would have cancelled the 10 Day Notice. The 10 Day Notice was not issued in relation to the security deposit and I find that the Tenant had options available to dispute the security deposit amount separate from rent payments. I find it unlikely that the Landlord would refuse to accept any money towards rent owing, which is confirmed by the Landlord's text message on October 6, 2018 in which she asks the Tenant to pay what he is able to.

As the Tenant was in agreement that October 2018 rent has not been paid, I find that the outstanding rent was not paid within 5 days of receiving the 10 Day Notice. Therefore, I dismiss the Tenant's application to cancel the 10 Day Notice and instead find that the notice is valid.

Pursuant to Section 55(1) of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, as long as the notice complies with Section 52 of the *Act*. Upon review of the 10 Day Notice, I find that it to be in compliance with Section 52 and therefore grant the Landlord a two-day Order of Possession.

As I have determined that the tenancy is ending based on the 10 Day Notice, I do not find it necessary to assess the merits of the One Month Notice.

I also accept the testimony of both parties that rent for October and November 2018 has not been paid. Therefore, pursuant to Section 67 of the *Act*, I find that the Landlord is entitled to \$1,350.00 for outstanding rent. Although the Landlord applied for the security deposit, as the tenancy is ending, I decline to award this amount.

As the Landlord was successful in her application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. As the Tenant was not successful in his application, I decline to award the recovery of the filing fee.

The Landlord is granted a Monetary Order in the amount of \$1,450.00, for rent for October and November 2018 and for the \$100.00 filing fee.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,450.00** for rent owed for October and November 2018, and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and 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: November 16, 2018

Residential Tenancy Branch