



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR DRI OLC (TENANT); FFL OPRM-DR (LANDLORD)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (Ten-Day Notice) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing, RG appearing for the tenants (“the tenant”) and SJ representing the landlords (“the landlord”). Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Each party acknowledged receipt of the other party's Notice of Hearing and evidentiary materials. I find each party served the other in accordance with the *Act*.

Preliminary Issue 1

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

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.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 46;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee.

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (Ten-Day Notice) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began on October 29, 2015 and is ongoing, currently as a month-to-month agreement. Rent is stated in the agreement to be \$1,200.00 a month payable on the first of the month. A copy of the tenancy agreement was submitted as evidence which includes a provision that several services are included in the rent such as the following: water, electricity and heat.

In March 2017, the tenant agreed to pay 50% of the hydro and gas bills.

The tenant stated that the landlord demanded a 50% rent increase in 2018; the parties met and came to an agreement that the amount paid by the tenant would increase. The parties testified that the new agreement was effective December 1, 2018 when rent increased on consent from \$1,200.00 a month to \$1,300.00

The parties testified that the tenant paid \$1,300.00 a month for December 2018, and from January to March 2019.

However, the tenant testified that on January 5, 2019, the landlord sent him an “email notice” to pay water and sewage fees of \$1,242.00. The tenant informed the landlord this was in violation of allowable rent increases and the tenant refused to pay the additional charges. No Notice of Rent Increase was submitted as evidence.

The dispute between the parties escalated. The tenant decided that the rental increase of December 2018 was unlawful and in violation of allowable rental increases.

Accordingly, the tenant reduced his rent payments by \$100.00 a month. The tenant paid only \$1,200.00 a month for rent starting April 1, 2019 and continued for the two subsequent months.

The landlord did not agree to the reduction in rent from \$1,300.00 to \$1,200.00 monthly.

The landlord issued a Ten-Day Notice in the standard RTB form on May 4, 2019 which he posted on the tenant’s door, thereby effecting service on May 7, 2019 pursuant to section 90. The tenant acknowledged receipt of the Ten-Day Notice, a copy of which was submitted in evidence. The effective date of the Notice is May 17, 2019. The Notice stated that the tenant was in arrears of rent of \$200.00 and utilities of \$547.81. The tenant filed an application for dispute resolution within the 5-day period, on May 9, 2019.

During the hearing, the landlord acknowledged the tenant did not owe any utilities.

The tenant agreed he had not paid \$100.00 a month for April and May 2019 and that he owed this amount for outstanding rent.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I find the tenant, as he acknowledged, was served with the Ten-Day Notice on May 7, 2019 in accordance with the *Act*. I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant owed \$200.00 in rent at the time the Notice was issued. I find that the tenant acknowledged that he agreed to increase the rent from \$1,200.00 a month to \$1,300.00 and that he paid the increased amount for several months. I find the tenant did not pay the full rent when it came due on April 1 and May 1, 2019 after the landlord demanded payment of additional utilities with respect to the unit. I find the tenant agreed he owed \$200.00 in outstanding rent.

A tenant is required to pay rent when it is due. Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes \$200.00 to the landlord for outstanding rent as claimed.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

Therefore, I dismiss the tenants' application to cancel the Ten-Day Notice.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and I have dismissed the tenant's application, I must grant the landlord an order of possession.

Thus, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

The tenant requested the Notice to Increase Rent issued by the landlord be cancelled. No Notice was submitted in evidence. The “email notice” from the landlord to add various charges to the rent is not in compliance with the *Act* and is of no force and effect.

I grant the landlord a monetary award for \$200.00 for outstanding rent and award of \$100.00 for reimbursement of the filing fee for a total monetary order of \$300.00.

Conclusion

I grant an **order of possession** to the landlord effective **two days** after service of this Order on the tenants. 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 a monetary order to the landlord in the amount of **\$300.00**.

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) 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: June 27, 2019

Residential Tenancy Branch