



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, CNR, OLC, RP, PSF, LRE, MNDCT
For the landlord: OPR, MNSD, MNDC, MNR, FFL

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (“Act”).

The tenant applied for an order cancelling the landlord’s One Month Notice to End Tenancy for Cause (“1 Month Notice”), for an order cancelling the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, for an order requiring the landlord to make repairs to the rental unit, for an order for the landlord to provide services or facilities agreed upon but not provided, for an order suspending or setting conditions on the landlord’s right to enter the rental unit, and for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The landlord applied for an order of possession for the rental unit pursuant to the 10 Day Notice, for authority to keep all or part of the tenant’s security deposit, for a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant's application for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, for an order requiring the landlord to make repairs to the rental unit, for an order for the landlord to provide services or facilities agreed upon but not provided, for an order suspending or setting conditions on the landlord's right to enter the rental unit, and for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation is unrelated to the primary issue of disputing the Notices, as the tenancy may be ending.

As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed the tenant's request for that relief, with leave to reapply.

I have also determined that the portion of the landlord's application seeking additional monetary compensation is also unrelated to the primary issue in his application of seeking an order of possession for the rental unit and a monetary order for unpaid rent. I likewise have severed the landlord's Application and dismissed that portion of the landlord's request for that relief, with leave to reapply.

The hearing proceeded only upon the tenant's application to seeking cancellation of the 2 Notices issued by the landlord and on the landlord's application seeking enforcement of his 10 Day Notice and a monetary order for unpaid rent.

As another preliminary issue, the landlord stated he had not received any evidence from the tenant, although the tenant said she sent the evidence with her application and notice of hearing package to the landlord.

In deciding whether or not this hearing should be adjourned, I reviewed the evidence and determined that the evidence relevant to the issues before me were copies of the Notices and an email sent from the landlord to the tenant, which the landlord had also submitted. I therefore proceeded with the hearing, as there was no disadvantage to the landlord.

The tenant did not raise an issue with regard to service of the landlord's application and evidence.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notices?

Is the landlord entitled to an order of possession for the rental unit based upon his Notice, to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted into evidence shows that this tenancy began on November 1, 2018, monthly rent is \$2,700.00, due on the first day of the month, and the tenant paid a security deposit of \$1,350.00.

Besides requesting an order of possession for the rental unit, the landlord made a monetary claim of \$6,900.00, for unpaid rent through July 2019.

Landlords' evidence-

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support his Notices.

The landlord submitted that the tenant was served the 10 Day Notice on May 24, 2019, by attaching it to the tenant's door, listing unpaid rent of \$2,700.00 as of May 1, 2019. The effective vacancy date listed on the Notice was June 5, 2019. A copy of the 10 Day Notice was submitted into evidence.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that since the Notice was issued, the tenant made a partial payment for May of \$1,200.00 and failed to pay the rent for June and July 2019. As of the day of the hearing, the tenant owed the amount of \$6,900.00, comprised of unpaid rent of \$1,500.00 for May, \$2,700.00 for June, and \$2,700.00 for July 2019.

Tenant's response-

The tenant did dispute the landlord's submission concerning the rent payments; however, she offered that she had serious personal and health related matters impacting her abilities to deal with tenancy issues.

During the hearing, the parties entered into a mediated discussion and the parties agreed to a resolution for the end of the tenancy.

Settled Agreement on Possession of the Rental Unit

The tenant and the landlord agreed to a mutual settlement under the following terms and conditions:

1. The tenant agrees to vacate the rental unit by 1:00 p.m. on July 20, 2019;
2. The tenant understands the landlord will be issued an order of possession for the rental unit, based upon the settled agreement, and that if the tenant fails to vacate the rental unit by 1:00 p.m., July 20, 2019, the landlord may serve the order of possession on the tenant for enforcement purposes;

The only remaining issue outstanding was the monetary claim of the landlord for unpaid rent.

Analysis

Landlord's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

The matter of possession of the rental unit has been mutually agreed upon.

As to the landlord's monetary claim, I also find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owe the amount of \$6,900.00 in unpaid rent through July 2019, due under the tenancy agreement, comprised of unpaid rent of \$1,500.00 for May, \$2,700.00 for June, and \$2,700.00 for July 2019. I grant the landlord a monetary award in this amount, pursuant to section 67 of the Act.

I also grant the landlord recovery of his filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$7,000.00, comprised of outstanding rent of \$6,900.00 through July 2019 and the \$100.00 filing fee paid by the landlord for this application.

As the landlord has claimed against the tenant's security deposit, I allow the landlord to retain the tenant's security deposit of \$1,350.00 in partial satisfaction of his monetary award of \$7,000.00, and grant the landlord a monetary order for the balance due, in the amount of \$5,650.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application-

As the parties have mutually agreed upon an order of possession for the landlord and the landlord's application for monetary compensation for unpaid rent has been successful, I dismiss the tenant's application.

Conclusion

The landlord has been granted an order of possession for the rental unit, pursuant to a settled agreement.

The landlord has been granted a monetary award of \$7,000.00, including the filing fee, and is allowed to deduct the tenant's security deposit in partial satisfaction of that award. The landlord is granted a monetary order for the balance due, in the amount of \$5,650.00.

The tenant's application is dismissed.

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: July 11, 2019

Residential Tenancy Branch