



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code AAT CNC CNR OLC PSF FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 9, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord allow access to the rental unit;
- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 1, 2019 (the "One Month Notice");
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 5, 2019 (the "10 Day Notice");
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlord provide services of facilities required by the tenancy agreement or law; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was assisted by E.S. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the application package was served on the Landlord by registered mail. In support, the Tenant submitted a Canada Post registered mail receipt. The Landlord also acknowledged receipt of the Application package. In addition, the Landlord testified that the documentary evidence to be relied upon was served on the Tenant by registered mail and by leaving a copy attached to the Tenant's door. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance and were

prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord allow access to the rental unit?
2. Is the Tenant entitled to an order cancelling the One Month Notice?
3. Is the Tenant entitled to an order cancelling the 10 Day Notice?
4. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?
5. Is the Tenant entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on June 1, 2019, and was expected to continue to May 31, 2020. Rent in the amount of \$2,200.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,100.00, which the Landlord holds. The parties agreed these were terms of the tenancy agreement between them.

The Landlord testified the Tenant did not pay rent when due on July 1, 2019. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenant by posting a copy to the Tenant's door on July 5, 2019. The Tenant acknowledged receipt on that date. At that time, rent in the amount of \$2,200.00 was outstanding. (Note: The 10 Day Notice is dated July 6, 2019, the day after the Tenant acknowledged receipt. I accept, that this is a typographical error that does not impact the validity of the 10 Day Notice.)

In addition, the Landlord testified the Tenant did not pay rent when due on August 1 and September 1, 2019, and that \$6,600.000 remains outstanding. The Tenant continues to occupy the rental unit.

In reply, the Tenant acknowledged rent has not been paid as alleged. He testified it was withheld because the Landlord provided him with only one fob. Although the fob provides access to the building and his rental unit, it does not enable him to access other amenities such as the garbage area and the pool.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, I find that the 10 Day Notice was received by the Tenant on July 5, 2019. Based on the evidence provided by the parties, I also find that no rent has been paid since the 10 Day Notice was issued. Specifically, rent was not paid when due on July 1, August 1, and September 1, 2019. I am satisfied that rent in the amount of \$6,600.00 remains outstanding. Although the Tenant alleged he has been unable to access certain amenities, I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct any rent. Accordingly, I find that the Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complies with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

As the tenancy is ending based on the Tenant's failure to pay rent when due, it has not been necessary for me to consider the remainder of the Application.

Conclusion

The Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenant. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 12, 2019

Residential Tenancy Branch