



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EUROPORT ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: CNR CNC LRE OLC PSF RP RR
Landlord: OPR MNR FF

Introduction

This hearing was convened in response to cross-applications by each party pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied September 03, 2019 to:

1. Cancel a 10 Day Notice to End Tenancy for Unpaid Rent – Sec.46
2. Rent Reduction – Sec. 65
3. Provide Services or Facilities in accordance with agreement or law – Sec. 65
4. Make repairs to the unit – Sec. 62(3)
5. Control landlord's right to enter – Sec. 70(1)
6. Order the landlord to comply with the Act – Sec. 62(3)

The tenant applied separately September 04, 2019 to:

7. Cancel a 1 Month Notice to end Tenancy for Cause – Sec.47(4)
8. Provide Services or Facilities in accordance with agreement or law – Sec. 65
9. Make repairs to the unit – Sec. 62(3)
10. Control landlord's right to enter – Sec. 70(1)
11. Order the landlord to comply with the Act – Sec. 62(3)

The landlord applied September 12, 2019 for:

1. An Order of Possession due to unpaid rent - Sec.55
2. A Monetary Order for unpaid rent - Sec.67
3. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing. The tenant was represented by their advocate and articulated law student. The landlord was represented by legal counsel. I accept the parties exchanged service of applications and document evidence. The parties were given opportunity to mutually resolve their dispute to no avail. Each was provided opportunity to present all relevant evidence and relevant affirmed testimony in respect to their claims and to make relevant prior submission to the hearing, fully participate in the conference call hearing and present witnesses. Neither party requested a summons to testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the tenant's primary claim regarding the two Notices to End are not sufficiently related to the tenant's additional claims in this matter to warrant they all be heard together. The parties were given a priority hearing date in order to address the question of validity of the Notices to End Tenancy. Therefore, I exercise my discretion and dismiss the tenant's other unrelated claims to their application(s) to cancel the landlord's Notices to End in this matter, with leave to reapply.

Issue(s) to be Decided

Is the 10 Day Notice to End Tenancy for Unpaid Rent (Ten Day Notice) valid?
Does the tenant have a right under the Act to reduce or deduct a portion from rent?
Is the 1 Month Notice to End Tenancy for Cause (One Month Notice) valid?
Should the Notice(s) to End Tenancy be cancelled?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy started in February 2015 and the tenant remains occupant of the unit. Rent in the amount of \$825.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$412.50 and requested a pet damage deposit in an equal amount of \$412.50, each representing half

of the payable rent. The tenant testified they paid the landlord the full amount of each deposit in cash but was not given a receipt. The landlord testified they are holding solely \$200.00 as a pet damage deposit and acknowledged it has not been their practice to provide receipts to the tenant, however, that they wrote in their copy of the tenancy agreement that the tenant had paid \$200.00. Regardless of which, the landlord retains both deposits in trust.

The tenant failed to pay rent when due for the month of September 2019 and on September 02, 2019 the landlord served the tenant with a Ten Day Notice for non-payment of rent in which it states the tenant owed rent of \$825.00. The tenant applied to dispute the notice within the required 5 days to do so and further satisfied half of the owed rent (\$412.50) within the same period. The tenant acknowledged not paying all the rent, notifying the landlord they were applying the pet damage deposit as balance of the rent. The tenant's evidence is that the landlord was holding their pet damage deposit; and that a pet damage deposit is not required for their certified *service dog*.

It is undisputed that at the outset of the tenancy the tenant had a *pet dog* and that thereafter the tenant possessed other *pet dogs*. The tenant testified that in the third year of the tenancy (2018) they obtained certification of their current dog as a *service dog*. The parties agreed that the status of the tenant's dog was not at issue during the tenancy and the landlord continued holding the pet damage deposit in trust.

In respect to the One Month Notice for Cause, on August 27, 2019 the landlord gave the tenant the One Month Notice by placing it on the tenant's door and in their mailbox on August 27, 2019. The One Month Notice indicated 3 reasons as marked pursuant to Section 47 of the Act, however failed to articulate any Details of Cause. The tenant testified they did not fully understand the landlord's reasons for issuing the One Month Notice and the parties argued over the landlord's reasoning for issuing the Notice, without agreement.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the evidence I find as follows.

Section 26 of the Act, in part, states;

Rules about payment and non-payment of rent

- 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.

I accept the tenant's premise that a service dog is not a *pet*, but rather, as an extension of the individual the dog is a *service dog*, and that together with their owner form a *service team*. Terms in the Act pertaining to *pets* and pet damage deposits do not pertain to *service dogs*. None the less, in this matter the parties agree that a pet damage deposit was accepted by the landlord at the start of the tenancy on the basis the tenant had a *pet dog*, and subsequently had other *pet dogs*. The actual amount of pet damage deposit in this tenancy is at issue between the parties; however, it is not an issue for determination in this proceeding and I make no finding in respect to the amounts being held by the landlord for deposits.

In this matter, the tenant determined to deduct the pet damage deposit from rent. I find that **Section 21** of the Act states that it was not available to the tenant to apply either of the deposits of the tenancy as rent without the landlord's *written consent*. Furthermore, I find that,

- 1). the tenant does not have an Arbitrator's Decision or Order allowing the tenant to withhold, deduct or reduce the rent.
- 2). the landlord has not illegally increased the rent extending the tenant the right to withhold any illegal rent increase from rent.
- 3). the landlord has not overcharged the tenant for a security or pet damage deposit extending the tenant the right to withhold any overpayment from rent.
- 4). the landlord has not refused the tenant's written request for reimbursement of emergency repair costs paid by the tenant.
- 5). the tenant does not have the landlord's written permission allowing the tenant to withhold or reduce the rent.

I find I have not been presented with evidence the tenant had a right under the Act to deduct all or a portion of the rent. Based on the evidence of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant filed to dispute the landlord's Notice and did not satisfy all rent owed. As a result of all

the above the tenant's application to set aside the landlord's Ten Day Notice to End is **dismissed**.

I find the landlord's Ten Day Notice to End complies with the form and content required by **Section 52** of the Act and is valid. **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

As the tenancy is ending pursuant to the Ten Day Notice to End Tenancy for Unpaid Rent, the landlord's One Month Notice to End Tenancy for Cause is moot and I make no finding in respect to it.

I find that the landlord has also established a monetary claim for unpaid rent. The landlord is further entitled to recovery of the filing fee.

Calculation for Monetary Order

Unpaid rent September 2019	\$412.50
Landlord's filing fee	\$100.00
Monetary Order to landlord	\$512.50

The landlord is obligated to administer the deposits of the tenancy in accordance with the Act at the end of the tenancy.

ORDERS

I grant an **Order of Possession** to the landlord effective **2 days from the day it is served on the tenant**. If the landlord seeks to rely on this Order, the tenant **must** be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the landlord a **Monetary Order** under Section 67 of the Act for the sum of **\$512.50**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application(s) to cancel the landlord's Notices to End Tenancy are dismissed, with leave to reapply for the balance of their application(s) which hereafter remain relevant.

The landlord's application is granted in the above terms, without leave to reapply.

This Decision is final and binding.

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 30, 2019

Residential Tenancy Branch