



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNRL-S FFL
For the tenant: CNL CNR OLC

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties, seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 12, 2019 (“10 Day Notice”), for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated September 6, 2019 (“2 Month Notice”) and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The tenant, the landlord and an agent for the landlord LT (“agent”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act.

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Regarding the landlord's claim for loss of rent and unpaid rent, I find refuse to hear the landlord's claim monetary pursuant to section 59(5)(c) of the *Residential Tenancy Act* (*Act*), because their application for dispute resolution did not provide sufficient particulars of their claim for damages, as is required by section 59(2)(b) of the *Act*.

The landlord is at liberty to reapply for unpaid rent and loss of rent; however, is reminded to provide a detailed breakdown of their monetary claim and is encouraged to use the Monetary Worksheet available at www.rto.gov.bc.ca when submitting a monetary claim. In the matter before me, the landlord failed to provide a breakdown at how they arrived at \$4,050.00 in unpaid rent and therefore, the landlord is at liberty to reapply for unpaid rent and loss of rent.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

The tenant's filing fee was waived, and the landlord paid a filing fee, the latter of which I will address later in this decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- What is the status of the 2 Month Notice and is it in effect and if so, should it be cancelled or upheld?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties agreed that there was no written tenancy agreement. The landlord did not dispute the tenant's testimony that a verbal tenancy began on June 15, 2017. The parties agreed that currently, monthly rent in the amount of \$450.00 is due on the first day of each month. The parties confirmed that the tenant paid a \$225.00 security deposit.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that they were served with the 10 Day Notice on August 13, 2019. The tenant applied to dispute the 10 Day Notice on August 14, 2019. The 10 Day Notice indicates that \$3,150.00 in unpaid rent was due February 2019, and includes an effective vacancy date of August 19, 2019. The agent testified that the tenant failed to pay any rent for the months including February, March, April, May, June, July, August, September, and October of 2019. The tenant claims that they paid rent in cash up until August 2019 and has not paid rent since August 2019 as they were waiting for the results of this hearing.

The tenant claims that the landlord has never issued a receipt for cash payments of rent during the tenancy. The landlord disputed the tenant's version of events, and the agent testified that a receipt was issued since the start of the tenancy for all cash payments of rent. The tenant first stated that August 2019 rent was paid on September 1, 2019, and then changed their testimony to August 1, 2019. The tenant was asked how they obtained the cash for the rent for August 2019, and the tenant states "I had cash on me." The tenant was then asked where the cash came from, and the tenant confirmed that they withdrew the cash from a bank. The tenant confirmed that they did not submit any banking records to support that cash was withdrawn from a bank to pay the rent for any of the months claimed by the landlord. The tenant also confirmed that they could not recall a specific date when cash was withdrawn for the August 1, 2019 rent payment. The landlord denies that any rent has been paid since January 2019.

Regarding the 2 Month Notice, the tenant confirmed they were served with the 2 Month Notice on September 11, 2019. The tenant confirmed they disputed the 2 Month Notice on September 12, 2019. The effective vacancy date listed on the 2 Month Notice is November 6, 2019.

The tenant continues to occupy the rental unit.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the *Act*, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. In fact, page two of the 10 Day Notice reinforces this by indicating to the tenant that the Notice may be disputed for specific reasons such as proof rent was paid, etc. In the matter before me, I find the tenant has provided insufficient evidence to support that rent has been paid as claimed

for several reasons. First, I find the tenant first stated that they paid August 2019 rent on September 1, 2019 and then changed their testimony to August 1, 2019. Furthermore, the tenant could not recall what date they withdrew cash to pay rent for August 2019, and the tenant failed to provide any banking records to support that cash was withdrawn as claimed. Therefore, I prefer the evidence of the landlord and agent that rent was not paid as claimed and **I dismiss** the tenant's application to cancel the 10 Day Notice as a result. I find that the 10 Day Notice is valid and I uphold the 10 Day Notice.

Given the above, I find the 2 Month Notice is of no force or effect as I find the tenancy ended on August 23, 2019, which is 10 days after August 13, 2019, the date the tenant confirmed having received the 10 Day Notice. In reaching this finding, I have also considered that the effective vacancy date of the 2 Month Notice was scheduled for November 6, 2019, and the tenancy already ended August 23, 2019.

Order of Possession – The effective vacancy date of the 10 Day Notice was August 19, 2019, which automatically corrects under section 53 of the *Act* to August 23, 2019 as the 10 Day Notice was confirmed as received August 13, 2019 by the tenant. The corrected effective vacancy date of the 10 Day Notice, August 23, 2019, has passed and the tenant continues to occupy the rental unit and admitted to not paying rent for September or October of 2019. Pursuant to section 55 of the *Act*, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the *Act*. I authorize the landlord to deduct \$100.00 from the tenant's security deposit of \$225.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the *Act*. Pursuant to sections 38 and 62(3) of the *Act*, I find that the tenant's security deposit balance is \$125.00 effective immediately.

Conclusion

The tenant's applications are dismissed, without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended August 23, 2019.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit of \$225.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the *Act*. The tenant's security deposit balance is \$125.00 effective immediately.

The landlords have been ordered to retain the tenants' full security deposit of \$250.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$2,800.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 15, 2019

Residential Tenancy Branch