



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNSTAR REALTY LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, DRI, PSF, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated August 29, 2019 ("One Month Notice");
- to cancel the 10 Day Notice to End Tenancy for Unpaid rent dated August 15, 2019 ("10 Day Notice");
- to dispute a rent increase from the Landlord;
- for an order to provide services or facilities required by the tenancy agreement or law;
- for an order for regular repairs; and
- to recover the \$100.00 cost of his Application filing fee.

The Tenant and two agents for the Landlord ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness, J.J., for the Landlord was also present and provided affirmed testimony.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the

Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated several matters of dispute on the Application, the most urgent of which are the requests to set aside a 10 Day Notice and a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I advised the Parties that I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice and One Month Notice, and the recovery of the Application filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issues:

- Should the 10 Day Notice be Cancelled or Confirmed?
- Should the One Month Notice be Cancelled or Confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled recovery of the \$100.00 cost of his Application filing fee?

Background

The Parties agreed that the periodic tenancy began on June 15, 2018, with a monthly rent of \$2,050.00, due on the first day of each month. However, the Parties also agreed that the rent was decreased by a former property manager, S.J., to \$1,600.00 until October 2018, when repairs were to be made to resolve some deficiencies in the rental unit. The Parties agreed that the Tenant paid a security deposit of \$1,050.00 - or half of the original rent - and no pet damage deposit. The Parties agreed that they never signed a tenancy agreement.

The Agents submitted an email from the Tenant to the dated July 24, 2019, in which the Tenant acknowledged that he was willing to pay \$1,900.00. In this email, the Tenant

said: "Until the elevator is complete, I will continue to pay 1900. At the time the elevator has become complete I will then pay 2050 as agreed."

The Tenant submitted a copy of the 10 Day Notice he received, which was served on him by the Agents. It is signed and dated August 13, 2019, has the rental unit address, and the ground being that the Tenant failed to pay \$350.00 due on August 1, 2019. The 10 Day Notice was served by the Agents posting it on the Tenant's door on August 15, 2019; it had an effective vacancy date of August 31, 2019. The Agents said in the hearing that they served the Tenant with the One Month Notice for disturbing his neighbour.

The One Month Notice is signed and dated August 29, 2019 and was served that day by posting it on the door, according to the Agent in the hearing. The One Month Notice has the rental unit address and an effective vacancy date of September 30, 2019.

The Tenant acknowledged having failed to pay the \$350.00 on August 1, 2019, and thereafter. He said it was because some issues remained with the rental unit that had led to the reduction in the rent from \$2,050.00. However, at this point, the Agents said that the Landlord was willing to accept \$1,950.00.

The Tenant said that the primary deficiencies in the unit included:

- Air conditioning ("AC") not functioning properly;
- No dishwasher in the rental unit; and
- No elevator in the rental unit.

The Agents said that the owners never agreed to drop the rent to the amount the Tenant said he was willing to pay, which, the Agents said, was why a tenancy agreement was never signed by the Parties.

The Parties agreed that the Landlord put significant effort and funds into trying to repair the AC; however, it was discovered that the heat pump had not been installed properly by the builder, which was why the AC was not operating at top capacity.

Further, the Agents said that the kitchen design did not have the plumbing or space set up for a built-in dishwasher. They said the Landlord offered to purchase a portable dishwasher for the Tenant, but the Tenant rejected that offer. Further, the Agents said that the original advertisement did not refer to there being a dishwasher or an elevator in the rental unit; therefore, they said it is unreasonable of the Tenant to expect that the

rent charged would include these items. The Agents submitted a copy of the original advertisement for the rental unit, as follows:

[location] furnished condo rental on [street address] – spacious 1 bedroom condo with walk-in closet and mountain views.

The advertisement goes on to describe the rental unit as being on two levels, 850 square feet and being brand new. The detailed listing does not refer to air conditioning, a dishwasher or an elevator.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” [emphasis added] There is no evidence before me that the Tenant had a right under the Act to deduct any portion of the monthly rent due to the Landlord.

Section 46 of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(2) says that the 10 Day Notice must comply with section 52, as to form and content.

Based on all the evidence before me, overall, I find that the Parties agreed to a rent of \$2,050.00 initially, which the Landlord reduced temporarily until the Tenant’s complaints were investigated. I find the Landlord offered reasonable resolutions to the Tenant’s issues in the circumstances and then reduced the ultimate rent by \$100.00 in order to appease the Tenant somewhat. The evidence before me is that the Tenant agreed to pay \$1,900.00; however, the evidence before me is that in August 2019 and in the months to follow, the Tenant only paid the Landlord \$1,600.00 for the rental unit. I find this demonstrates that he did not pay the Landlord the full rent owing for these months.

Based on the above evidence, I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act. I also find that the ground stated for serving this Notice is valid. As a result of these factors, I find that the Landlord is entitled to an

Order of Possession pursuant to section 55 of the Act. Given this conclusion, I find it is not necessary to consider the validity of the One Month Notice.

As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid full rent for the current month, the Order of Possession will be effective two days after service of the Order on the Tenant.

As the Tenant is unsuccessful in his Application, I decline to award him recovery of the \$100.00 Application filing fee.

Conclusion

The Tenant has not paid his full rent owing for more than the last four months, so his Application is dismissed without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 29, 2019

Residential Tenancy Branch