



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR OPC MNRL-S FFL
For the tenant: CNC CNR RP

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* (the Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2019 (10 Day Notice), for and order of possession based on a 1 Month Notice to End Tenancy for Cause (1 Month 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 1 Month Notice and for regular repairs to the unit, site or property.

The tenant and the landlord 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 (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

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 fees were waived for both tenant applications. As the landlord paid a filing fee, I will address the landlord's filing fee later in this decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to unpaid rent or utilities?
- 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

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The fixed-term tenancy began on September 1, 2019 and the monthly rent of \$4,500.00 was due on the first day of each month. The tenant paid a security deposit of \$2,250.00 at the start of the tenancy, which the landlord continues to hold.

A copy of the 10 Day Notice was submitted in evidence. The tenant confirmed that they received the 10 Day Notice and although they could not recall the specific day, the tenant confirmed that it was sometime that weekend. The 10 Day Notice is dated November 2, 2019. The 10 Day Notice indicates that \$4,500.00 in rent was owed as of November 1, 2019. The tenant confirmed that they did not pay the landlord rent and instead relied on their sub-tenants to pay the landlord directly. There is no dispute that the landlord was paid November 18, 2019, which was late November 2019 rent.

There is no dispute that the landlord has accepted money for use and occupancy for December 2019. As a result, the earliest order of possession date would be December 31, 2019 at 1:00 p.m. As there was no dispute before me that rent was not paid within 5 days of November 2, 2019 and there was insufficient evidence before me that the tenant received the 10 Day Notice on a specific date later than November 2, 2019, the

parties were advised that the tenancy ends based on a valid 10 Day Notice where rent was not paid within 5 days of the issuance of the 10 Day Notice.

The rental unit continues to be occupied. The landlord seeks an order of possession.

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. The tenant confirmed that they did not pay rent directly to the landlord for November 2019 and therefore I accept that the rent payment made on November 18, 2019, was well after the 5-day timeline listed on the 10 Day Notice and that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which automatically corrects under section 53 of the Act to November 12, 2019. Given the above, I dismiss the tenant's applications without leave to reapply, due to insufficient evidence. I find that I do not need to consider the 1 Month Notice which relates to a sublet issue as the tenancy ended based on the 10 Day Notice.

Order of Possession – 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 **December 31, 2019 at 1:00 p.m.** I find the tenancy ended on November 12, 2019.

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 \$2,250.00 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 \$2,150.00 effective immediately.

I find the tenant's claim for regular repairs to be moot as the tenancy has ended. I therefore, dismiss all aspects of both tenant applications.

Conclusion

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

The landlord's application is successful. The landlord has been granted an order of possession effective December 31, 2019 at 1:00 p.m. 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 November 12, 2019.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit 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 \$2,150.00 effective immediately.

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: December 17, 2019

Residential Tenancy Branch