



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1147058 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes tenant: **FFT, CNR, CNC**
 RR, OLC, RP, MNDCT, FFT

 Landlord: **FFL, OPR, MNRL, OPN**

Introduction

This hearing dealt with applications filed by the landlord and the tenant pursuant to the *Residential Tenancy Act* ("Act").

The tenant filed two applications. The first application sought:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;

This application was amended to seek:

- An order to cancel a One Month Notice to End tenancy for Cause pursuant to section 47.

The tenant's second application sought:

- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order for regular repairs pursuant to sections 32 and 62;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's application sought:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55
- A monetary order for rent pursuant to section 67; and
- An Order of Possession for a tenant's Notice to End Tenancy pursuant to sections 45 and 55.

The tenant attended the hearing. The landlord was represented at the hearing by property manager, NS ("landlord"). JZ, a director of the rental unit's owner company was also on the line, however this person did not participate in the call. As both parties were present, service of documents was confirmed. Both parties acknowledge receipt of one another's Application for Dispute Resolution Proceedings Package and evidence. Both parties stated there were no concerns with timely service of documents.

Preliminary Issues

The landlord confirmed the tenancy agreement is between the single named tenant as shown on the cover page of this decision and no others. The landlord also advises that the property management company named as a landlord on the tenant's application is not the landlord as named on the tenancy agreement; it is the numbered company as shown on the cover page of this decision. The tenant advises that these are errors made by the landlord's agent at the commencement of the tenancy. I reviewed the tenancy agreement and determined that the second tenant named on the tenant's application was not a signatory to the tenancy agreement and therefore had no standing to commence an application. Pursuant to Rule 6.2 I dismissed this person as an applicant although she was allowed to remain on the line during the hearing. The landlord's name was likewise amended to reflect the numbered company as shown on the cover page of this decision as that company is the only landlord appearing on the tenancy agreement.

The tenant had amended his Application for Dispute Resolution Proceedings to include an application to dispute a One Month Notice To End Tenancy for Cause served upon him. The landlord does not acknowledge being served with a copy of the amendment but stated he was prepared to proceed with hearing the merits of this application at this hearing.

Lastly, Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined that the tenant's application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the landlord's application

seeking an Order of Possession based on the same Notice were sufficiently related and that I would hear those applications. I would also hear the merits of the landlord's One Month Notice to End Tenancy for Cause. The remainder of the tenant's issues were dismissed with leave to reapply.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

If the tenant has not paid rent, is the landlord entitled to recover the unpaid rent?

Should the One Month Notice To End Tenancy for Cause be upheld or cancelled?

Should either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The rental unit is the upper unit in a house with an upper and lower unit. A copy of the signed tenancy agreement was provided as evidence. The fixed, one-year tenancy began on August 1, 2019 and is set to become month to month at the end of July 2020. Rent is set at \$1,600.00 per month, payable on the first day of each month. A security deposit of \$800.00 was collected by the landlord which he still retains.

The landlord testified that the people occupying the lower unit of the house were disruptive and the landlord took steps to end that tenancy. On November 1, 2019, the landlord verbally gave the applicant/tenant a 25% reduction in rent for the months the tenant had to endure living with the occupants below. For each of the months of August, September, October and November, the landlord would reimburse the tenant for 25% rent. In lieu of repaying each of those months, the landlord waived rent for the month of November, considering it paid.

The disruptive occupants of the lower unit were not removed until January 17, 2020. For the months of December and January the landlord continued to accept a 25% reduction in the rent due to the disruptive behavior of the lower occupants. On February

1, 2020, the tenant once again paid \$1,200.00 in rent despite the fact that the lower occupants were removed. On February 3, 2020, the landlord sent the tenant an email indicating rent is \$1,600.00 and asked that the remaining \$400.00 rent be paid by the following day or the tenant would be subjected to the late rent fee of \$25.00. A copy of the email was provided as evidence. The landlord did not receive the remaining \$400.00 and on February 5, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicating the tenant failed to pay rent in the amount of \$400.00 that was due on February 1, 2020. The landlord testified that the tenant also paid rent in the amount of \$1,200.00 instead of \$1,600.00 for the month of March, 2020.

The tenant provided the following testimony. He and the landlord had a verbal agreement that rent would be \$1,200.00. Nothing was committed to writing. The fact that the occupants in the lower suite were disruptive was part of the reason for the reduced rent, but more importantly, his rental unit suffered from a number of deficiencies. The tenant testified there are issues with the stove. The furnace hadn't been inspected since 2004, the heating ducts were covered over by flooring from August to March. There is no microwave, no toilet, the fridge requires repairs and the tenant's access to the electrical panel was hindered because it was located in the lower unit of the house. The tenant describes the tenancy as '*6 months of hell*' because the lower unit occupants had full control over the electrical panel. The tenant testified he didn't file an Application for Dispute Resolution against the landlord earlier in the tenancy because the landlord kept promising him the deficiencies would be addressed.

Analysis

The evidence provided by the parties indicate the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting to the tenant's door on February 5, 2020. The Notice is deemed served in accordance with section 88 of the *Act*. The tenant failed to dispute the notice on the same day.

Section 46 of the *Act* states:

- (1) 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.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The tenant argues that there was an ongoing agreement with the landlord that he was entitled to pay \$1,200.00 rent instead of the full \$1,600.00 stipulated in the tenancy agreement. The tenant acknowledged during the hearing that he had nothing in writing from the landlord acknowledging that verbal agreement. Despite this, the tenant continued to reduce his rent by 25% in February 2020 and into March.

Section 46(3) indicates the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has no effect if the tenant is permitted under this *Act* to deduct an amount of rent. Based on the evidence before me, I find the tenant did not have permission from the landlord to deduct any portion of his rent. Likewise, the tenant did not have an order from the director allowing him to deduct any portion of his rent. Section 26 of the *Act* is clear, 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.

The tenant had the right to seek an order from the director to legitimately reduce his rent if the director determines such a reduction is warranted. If the living conditions were as 'hellish' as the tenant says they were at the beginning of the tenancy, the tenant had the opportunity to seek an order for the conditions to change or for a reduction in rent. To be clear, it is not within the tenant's authority to arbitrarily reduce the amount of rent agreed to in the tenancy agreement.

I find the tenant was not permitted to withhold any part of his rent and that he failed to pay the additional \$400.00 in rent within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I uphold the landlord's Notice. I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*. The landlord is entitled to an Order of Possession. As the effective date stated on the Notice has passed, I issue an Order of Possession to the landlord effective 2 days after service upon the tenant.

The evidence of the parties shows the tenant is in arrears of rent of \$400.00 for February 2020. The tenant has paid rent in the amount of \$1,200.00 on March 1, 2020. As rent has been determined to be \$1,600.00 per month, I determine that the \$1,200.00 paid to the landlord be distributed as \$400.00 in arrears for the month of February and

remaining \$800.00 represents rent for the first two weeks of March. There will be no monetary order in favour of the landlord as I deem the rental arrears are now paid in full.

Section 72 of the *Act* allows the director to award filing fees to the parties. As the landlord's application was successful, I award the landlord \$100.00 pursuant to section 72. The landlord is entitled to retain \$100.00 of the tenant's security deposit at the conclusion of the tenancy pursuant to section 72.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I award the landlord \$100.00 pursuant to section 72. The landlord is entitled to retain \$100.00 of the tenant's security deposit at the conclusion of the tenancy pursuant to section 72.

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: March 17, 2020

Residential Tenancy Branch