



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, RR, MNDCT, OLC, LAT, FFT
OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 9, 2020. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent (the “Notice”) dated March 4, 2020, request to suspend or set conditions on the Landlords’ right to enter the rental unit, to request a reduce rent for repairs, services or facilities agreed upon but not provided, for a monetary order for compensation for my monetary loss or other money owed, for an order for the Landlord to comply with the *Act*, for authorization to change the locks to the rental unit, and to recover the filing fee paid for their application.

The Landlord’s Application for Dispute Resolution was made on March 16, 2020. The Landlord applied to enforce a 10-Day Notice for Unpaid Rent (the “Notice”) dated March 4, 2020, for a monetary order for unpaid rent, and to recover the filing fee paid for their application.

The Tenant’s daughter (the “Tenant”) and one of the Landlords (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony 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 Matters- Related Issues

I have reviewed the Tenant's application, and I note that they have applied to cancel a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel these Notices. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims to request to suspend or set conditions on the Landlords' right to enter the rental unit, to request a reduce rent for repairs, services or facilities agreed upon but not provided, for a monetary order for compensation for my monetary loss or other money owed, for an order for the Landlord to comply with the *Act*, and for authorization to change the locks to the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the 10-Day Notice and to recover the filing fee paid for their application.

Preliminary Matters – Named Party Removed

During these proceedings, the Parties agreed that the Tenant's daughter had not signed the tenancy agreement.

As the Tenant's daughter is not a signed party to the tenancy agreement, I find that the Tenant's daughter (J.L.) can not be listed as a responsible party to the Landlords' claim.

The Landlord agreed to the removal of the Tenant's daughter, as a listed respondent, to their claim.

Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Tenant entitled to recover the filing fee for this application?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on February 3, 2020. Rent in the amount of \$1,650.00 is to be paid by the third day of each month and that the Tenant paid the Landlord a \$825.00 security deposit at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that on March 4, 2020, they issued the Notice to end the tenancy, listing an outstanding rent amount of \$1,650.00. The Landlord testified that the Tenant has not paid the outstanding as indicated on the Notice for March 2020 and that they have also not paid the April 2020. The Landlord is requesting an order of possession to enforce the Notice and a monetary order for the outstanding rent. The Landlord provided a copy of the Notice to end tenancy into documentary evidence.

The Tenant testified that they agreed that the rent for March and April 2020, had not been paid but that it was due to the Landlord entering the rental unit without notice and the Landlords' refusal to apologise for this breaching the *Act*.

The Tenant testified that they had moved out of the rental unit on February 13, 2020, the same day the Landlord entered the rental unit without notice. The Tenant also testified that they had not returned the keys to the rental unit to the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of

these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (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.

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant was deemed to have received the 10-Day notice on March 7, 2020, three days after it was posted to the door of the rental unit and that they did apply to dispute the Notice within the legislated timeline.

I accept the testimony of both parties that the Tenant has not paid the outstanding rent as stated on the notice, nor have they paid the rent for April 2020.

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 have reviewed the Tenant's testimony and their documentary evidence, and I find that the Tenant has not provided any evidence to show that they had permission from the Landlord to withhold the rent, or that they had an order from this office allowing them to withhold any portion of the rent. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant's application to dispute the notice has been dismissed.

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I accept the testimony of the both parties that the Tenant has not paid the outstanding rent as indicated on the Notice, nor has the Tenant paid the rent for April 2020. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for March and April 2020, in the amount of 3,300.00, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their

application, I find the Landlord is entitled to recover the \$100.00 filing fee for their application.

I grant the Landlord a Monetary Order in the amount of \$2,575.00; consisting of \$3,300.00 in unpaid rent, and \$100.00 for the recovery of the filing fee, less the \$825.00 security deposit they are holding for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$2,575.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 21, 2020

Residential Tenancy Branch