



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: FFL, OPR, MNRL, OPN
 Tenants: MNDCT, CNR-MT, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on February 14, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- an order of possession for the tenants notice to end tenancy; and
- an order granting recovery of the filing fee.

The Tenant has made an Application for Dispute Resolution on March 13, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 3, 2020 (the “10 Day Notice”);
- more time to extend the time limit established by the *Act*, to make an Application for dispute resolution to obtain an order cancelling the 10 Day Notice;
- a monetary order for damage or compensation; and
- an order granting the recovery of the filling fee.

The Landlord’s Agent N.D., as well as the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to

section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written 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 Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Landlord's request for an order of possession based on the Tenant's notice to end tenancy, as well as the Tenant's request for a monetary order for money owed or compensation for damage or loss are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated February 3, 2020, pursuant to Section 46 of the *Act*?
2. Is the Tenant permitted to more time to file her Application to cancel a Notice to End Tenancy, pursuant to Section 66 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

5. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
6. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began sometime in 2013 before the current Landlord purchased the rental property in December 2019 and assumed the tenancy. Currently, rent in the amount of \$1,400.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 which the Landlord continues to hold.

N.D. testified the Tenant did not pay the full amount of rent to the Landlord in January 2020, having an outstanding balance of \$100.00. N.D. stated that the Tenant failed to pay rent in the amount of \$1,400.00 to the Landlord for February 2020. N.D. stated that the Landlord subsequently served a 10 Day Notice dated February 3, 2020 with an effective date of February 5, 2020, by posting it to the Tenant's door on February 5, 2020. The Landlord submitted a proof of service notice in support. N.D. testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,500.00 to the Landlord which was due on February 1, 2020.

N.D. stated that the Tenant failed to pay any amount of the outstanding rent to the Landlord as indicated on the 10 Day Notice. Furthermore, N.D. stated that the Tenant failed to pay rent to the Landlord in March and April 2020. Currently, N.D. stated that the Tenant owes the Landlord rent in the amount of \$4,300.00.

The Tenant testified that she received the 10 Day Notice on February 5, 2020 after finding it posted to her gate. The Tenant stated that she applied to cancel the 10 Day Notice on March 13, 2020. The Tenant has applied for more time to dispute the 10 Day Notice. The Tenant confirmed that she has not paid the outstanding rent in the amount of \$1,500.00 to the Landlord in relation to the 10 Day Notice. Furthermore, the Tenant confirmed that she has not paid the Landlord rent for March and April 2020.

The Tenant stated that there has been a septic issue at the rental unit since the start of her tenancy. The Tenant stated that she has expressed her concern to the Landlord when they purchased the rental property in December 2019. The Tenant stated that the septic system is leaking into her rental unit which is created an unhealthy environment

for her to reside in. The Tenant stated that on February 6, 2020 the Health Authority attended the rental unit and disconnected the power to the rental unit until such a time that the Landlord repairs the leaking septic system. The Tenant stated that she submitted an application to the Residential Tenancy Branch for an order for emergency repair and that on March 9, 2020 the Arbitrator ordered that the Landlord have the electrical system inspected and repaired on or before March 16, 2020. The Tenant stated that the Arbitrator ordered a 50% rent reduction to be applied effective April 1, 2020 should the Landlord not comply with this order. The parties agreed that the Tenant continues to be without hydro currently.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the 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.

Section 46 of the Act states 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(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

N.D. testified that the Landlord served the Tenant with the 10 Day Notice dated February 3, 2020 with an effective vacancy date of February 5, 2020, by posting it on the door of the dispute address on February 5, 2020. The Tenant confirmed having received the 10 Day Notice on February 5, 2020. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenant had until February 10, 2020 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenant has not paid rent in full to the Landlord by February 10, 2020. I further find that the Tenant has submitted her Application to

dispute the 10 Day Notice on March 13, 2020. As this is outside of the statutory time limit set out in Section 46(5) of the *Act*, the Tenant submitted her Application late.

While the Tenant applied for more time to submit her Application to Dispute the Notice, I find that the Tenant provided insufficient evidence to demonstrate that she was unable to submit her Application within the time limits set out in the *Act*. As such, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, February 15, 2020.

In light of the above, I dismiss the Tenant's Application without leave to reapply. Under section 55 of the *Act*, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order should be served onto the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

During the hearing, the parties confirmed that the Tenant did not pay the full amount of rent for January, February, March, and April 2020 in the amount of \$4,300.00. I accept that the Landlord has not yet complied with the Arbitrator's Order created on March 6, 2020 for emergency repairs. As such, I am satisfied that the Tenant is entitled to a rent reduction of 50% for the month of April 2020 as reflected in the March 6, 2020 decision. As such, I find the Tenant would have only been required to pay rent to the Landlord in the amount of \$700.00 for April 2020.

In light of the above I find that the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,600.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim which has been calculated below;

Item	Amount
Unpaid January 2020 Rent	\$100.00
Unpaid February 2020 Rent	\$1,400.00
Unpaid March 2020 Rent	\$1,400.00
Unpaid April 2020 Rent Reduction Applied	\$700.00
Filing Fee	\$100.00
Less Security Deposit	-\$650.00
Total Monetary Order	\$3,050.00

Conclusion

The Tenant has failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,050.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 24, 2020

Residential Tenancy Branch