



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR FF / CNC CNR MNDC OLC LAT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the 10 Day Notice and One Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession for unpaid rent and/or cause or should the 10 Day Notice and/or One Month Notice be cancelled?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on July 1, 2019 with a monthly rent of \$1200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 and a pet deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated March 5, 2020. The 10 Day Notice indicates an outstanding rent amount of \$1200.00 which was due on March 1, 2020. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on March 5, 2020 she personally served the tenant with the 10 Day Notice. The landlord testified the outstanding rent was not paid within 5 days.

The tenant acknowledged service of the 10 Day Notice and that she did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant testified that she had a verbal agreement with the landlord that her security and pet deposit in the total of \$900.00 could be retained and she would vacate the unit at the end of the month.

The landlord disputed any such verbal agreement to apply the deposits to the rent.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on March 5, 2020.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that 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 find the tenant did not pay the full amount of rent arrears within 5 days of the 10 Notice being served. The tenant provided insufficient evidence there was an agreement to apply the deposits to the rent. In either event, the deposits would not have covered the full outstanding rent amount. I also note that the tenant originally filed her application to dispute a One Month Notice dated January 31, 2020 and subsequently amended her application to dispute a 10 Day Notice dated February 29, 2020 for unpaid rent from December 2019. The tenant did not amend her application to dispute the 10 Day Notice dated March 5, 2020.

I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the tenant's security deposit.

As the tenancy has ended pursuant to the 10 Day Notice dated March 5, 2020, I make no finding on the merits of the other two Notices to End Tenancy on file.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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