



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, , OPR, MNRL, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on March 10, 2020.

Both parties appeared, gave affirmed and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenant acknowledged that they received the Notice. The tenant stated they did not pay rent for March and April 2020, as they withheld rent because they believe the landlord has violated the Act, by removing the stove. The tenant confirmed they did not have permission to withhold rent from an Arbitrator.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act.

However, the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the Notice is valid and remains in full for and effective. I find the tenancy legally ended on March 20, 2020, and the tenant is

overholding the premise. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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 costs of such enforcement are recoverable from the tenant.

The evidence of the tenant was they did not pay rent for March (\$600.00) and April (\$600.00) 2020. I find the tenant has breached section 26 of the Act. I find the landlord is entitled to recover unpaid rent in the amount of **\$1,200.00**

I find the landlord has established a toto monetary order of **\$1,300.00** comprised of the above amount and the \$100.00 cost of filing their application. I grant the landlord a formal order in the above amount pursuant to section 67 of the Act. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

I have not offset the security deposit with the monetary claim awarded as the parties could not agree on the amount paid. The landlord stated \$100.00 was paid; the tenant stated \$400.00 was paid. Should the tenant not pay the above monetary amount as order prior to vacating the premises, I find the landlord is entitled to keep any security deposit paid, pursuant to section 48(4) of the Act.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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 27, 2020

Residential Tenancy Branch