



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

CNR

Introduction

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

The landlord applied for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46.

The tenant attended the teleconference and the landlord was represented at the hearing by an agent, VR. As both parties were present, exchange of documents was reviewed. Both parties acknowledged being served with one another's Application for Dispute Resolution and evidence and stated they had no concerns with timely service of documents.

Issue(s) to be Decided

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

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

Can the landlord 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's agent provided the following testimony. The rental unit is the basement unit in the landlord's house. The tenancy began on April 15, 2015 with rent set at \$600.00 per month, payable on the first day of the month. No security deposit was paid by the tenant at the commencement of the tenancy.

Up until January 2020 rent had been paid, but the landlord did not receive rent for February. On March 1st, the landlord served the tenant with a 10 Day Notice to End Tenancy by personally serving the tenant. The tenant acknowledges receiving it on that day and a copy of the Notice was provided as evidence by the landlord. The Notice is signed and dated March 1, 2020 and indicates the tenant failed to pay rent in the amount of \$1,800.00 that was due on March 1, 2020. The Notice provides an effective date of March 11, 2020. The landlord's agent testified the \$1,800.00 represents unpaid arrears in rent for January and February 2020 as well as \$600.00 due and owing as of March 1, 2020. The landlord's agent testified that he has not received any payments from the tenant since serving him.

The tenant testified that he was laid off work in mid-January. He suspects the landlord is not giving him his unemployment cheques that were mailed to him. He didn't receive his first cheque until March 24th and it was a 'small cheque' because the government was making deductions on his cheques. He has not received a cheque for the month of April and suspects this is because the landlord continues to withhold it from him.

The tenant testified that the second reason he didn't pay rent is because the hot water in his shower has been cut off by the landlord for the past year and a half. He has been using the hot water in the kitchen sink to clean himself. He never filed an Application for Dispute Resolution against the landlord for a rent reduction or an order for the landlord to do repairs because he's never been through an experience like this before. The tenant acknowledges he didn't pay the rent because '*they're not fixing anything*'.

Analysis

Sections 46(1)(4) and (5) of the Act state:

- (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.
- (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 the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 1, 2020 in accordance with section 88 of the Act. The tenant filed to dispute the Notice on March 2, 2020, within five days.

Section 26 of the Act states 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.

Despite the issue with the hot water identified by the tenant, I find the tenant did not have any predetermined right to deduct any rent due under the tenancy agreement and was obligated to pay \$600.00 per month rent to the landlord on the first day of each month. Although the tenant believes the landlord was not giving him his unemployment cheques that were sent to him in the mail, he is not relieved of the obligation to pay rent when it is due pursuant to section 26 of the Act. Likewise, the landlord is under no obligation to accept rent late.

I am satisfied that the tenant did not pay rent for the months of January or February when the Notice was given to him on March 1st. The Notice indicates the tenant also failed to pay March rent which isn't considered unpaid until March 2nd, the day after rent is due. Despite this, the arrears in rent for January and February remained unpaid and at the time he was served with the Notice, the tenant ought to have known rent for the month of March was due and would be considered late the following day. Based on

this, I amend the Notice to comply with the Act in accordance with section 68 of the Act. In all other respects, I find the Notice complies with form and content in accordance with section 52 of the Act as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find the tenant failed to pay \$600.00 rent for January, February, and March of 2020. As such, pursuant to section 67 of the Act, the landlord is entitled to a monetary order in the amount of \$1,800.00.

As the landlord's application was successful, I award the landlord the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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 issue a monetary order in the landlord's favour in the amount of \$1,900.00.

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 28, 2020

Residential Tenancy Branch