



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sandy Creek Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, CNR

Introduction

The tenant filed an Application for Dispute Resolution on February 7, 2020 seeking an order to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' (the "10 Day Notice"). The tenant also made a request for an order for repairs to the unit. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on March 23, 2020.

Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

The tenant stated that she delivered notice of the dispute hearing to the landlord's office on February 8, 2020. All evidence they intend to rely on for this process was delivered in the same envelope. In a written statement the landlord confirmed they received the application on February 7, then received the tenant's evidence on March 8, 2020. The landlord also provided evidence; I confirmed this was in the tenant's possession during the hearing.

In the hearing I informed both parties that the tenant's request for repairs to the unit was not at issue. This was not the reason for service of the 10 Day Notice. By Residential Tenancy Rule of Procedure 2.3, I amend the tenant's application to exclude this matter. The tenant may file a new and separate application to address the repair issues.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the 10-Day Notice pursuant to section 46 of the *Act*?

If the tenants are unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an order of possession pursuant to section 55(4) of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented the terms of a prior tenancy agreement with the other previous co-tenant. There was a tenancy agreement signed on September 20, 2019. The prior tenancy started on October 1, 2019 and was shown to end on a fixed tenancy on April 30, 2020, as indicated in the provided tenancy agreement. Together with a roommate, rent was \$1,300.00 per month payable on the first of each month. The \$650 security deposit was paid on September 23, 2019. An undated 'Mutual Agreement to End a Tenancy' appears, bearing all parties' signatures for the move out date on October 31, 2019.

After this roommate moved out, the tenant alone signed a new agreement on November 1, 2019. The landlord stated this agreement, as it stands, is a one-month fixed term tenancy and referred to this arrangement as a "one-month probation". At the end of this term, there was going to be a month-to-month arrangement. The "probation" refers to issues with previous roommates, accused of criminal activity. The landlord wanted to end the tenancy for this reason, but "would do a one-month probation and they would see."

The landlord gave the following details on the signing of the November 1, 2019 agreement:

- The rent is shown to be \$1250; however, this amount is crossed out and \$1,300 is filled in behind, with the initials of both parties.
- During the signing of this tenancy agreement, the tenant stated the rent amount with the roommate was \$1250 – this is what was written into the agreement.
- The landlord reviewed the previous tenancy agreement and determined the rent was \$1300 and corrected this on the tenancy agreement.
- Both parties initialled the change on the tenancy agreement.

Both parties signed a 'Mutual Agreement to End Tenancy' on October 31, 2019. The tenant agreed to vacate the unit on November 30, 2019.

The landlord provides a statement of events regarding the tenant's failure to pay rent as follows:

- January 7, 2020: The landlord served a 10 Day Notice – move out date set for January 20, 2020 – this is for \$1,250.00 due on January 1, 2020;
- January 9, 2020: The landlord completed a 10-Day Notice – move-out date set for January 20, 2020 – this document indicates it was served in person, but does not set out a date of service – this amount is \$300, payable Dec 1, 2019;

- February 4, 2020: The landlord issued a 10-Day Notice for failure to pay rent – move-out date set for February 14, 2020 – this amount is \$200

A statement of account dated March 6, 2020 provided by the landlord covers the months from September 2019 through to March 2020. For 2019, November and December rent was paid in full, in partial payments. For 2020, each of January (\$1250), February (\$1100) and March (\$1250) were not paid in full, with a \$465 balance of rent owing.

For the unpaid February rent, the landlord issued a 10 Day Notice. This was posted on the tenant's door. In the hearing the tenant stated she did not have this; however, she then stated she did have it when applying for this hearing and quoted the amount -- \$200 – in question. They stated: "I have seen it and know what we are talking about." The tenant applied on February 7, and in the Application itself the date of this 10 Day Notice is provided, also that it was posted on the door.

The landlord called a witness from the other room; this person is an agent of the landlord. This person posted the 10 Day Notice, with a separate witness, around noon on that date.

Regarding the payment of rent, and the pattern that has developed over the past few months, the tenant provided a written statement into evidence. In this statement they state: ". . .on the lease I signed, we agreed that I pay twelve hundred and fifty in rent. . .Now, the landlord is asking me to pay thirteen hundred dollars and that I should have been paying that amount all along."

In the hearing, the tenant stated they had a copy of the statement of account. They stated the rent amount is \$1,250: this is the amount signed for on the tenancy agreement; other documents refer to \$1,250; and this amount is the same as an advertisement that appeared for the unit. They also stated the topic of talking to the landlord, who then stated the rent was \$1,300 because another person had moved in to the unit.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

The landlord submitted proof they twice served a 10 Day Notice to the tenant for unpaid rent. The only notice before me on this review is that issued on February 4, 2020.

I find as fact that when the landlord issued the 10 Day Notice on February 4, 2020, the tenant owed \$200.00. I am satisfied the landlord issued the 10 Day Notice and the tenant received it on that same day.

The tenant presented, essentially, that she was not aware of the correct amount of rent to be paid. I find the records give weight to the evidence that she was informed: she paid the full amount (albeit in portions) for November and December; additionally, she initialled the correct amount on the tenancy agreement. The landlord's evidence was that a discussion took place at the time of signing; there is no evidence to the contrary.

I weigh the landlord's statement of account against the evidence of the tenant who states they were essentially not aware of the correct amount of rent to be paid. There are two factors I consider to be justification for the landlord serving the 10 Day Notice: first, payment in portions for November and December; secondly, late and incomplete payments for January and February. Therefore, I find the 10 Day Notice issued on February 4, 2020 is valid and sufficient.

The tenant application to cancel the 10 Day Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10 Day Notice 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 of form and content. The landlord is entitled to an order of possession on the effective date.

Conclusion

For the reasons outlined above, I dismiss the TTs application for a cancellation of the 10 Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 2, 2020