



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1137807 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNR, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 28, 2020, wherein the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 2, 2020 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement, as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on April 3, 2020. The Tenant and the Landlord's Agent, A.D., called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?

3. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's Agent testified as follows. He stated that the tenancy began October 2019. Monthly rent is \$2,400.00. The Landlord collected a security deposit of \$600.00.

The Agent confirmed there are four bedrooms in the rental unit. The Agent stated that the Municipal Bylaw Enforcement Officer informed the Agent that 14 people are residing in the rental unit. Although the Landlord issued a 1 Month Notice to End Tenancy for Cause on February 1, 2020, that matter was not before me in the current Application.

The Agent stated that the Tenant failed to pay the January 2020 rent following which the landlord issued the Notice. The Agent also stated that the Tenant has not paid rent for February, March or April 2020.

The Agent testified that he served the Notice by posting to the rental unit door on January 22, 2020.

The Tenant provided confirmation in evidence that he paid \$2,000.00 on January 8, 2020. The Landlord's Agent confirmed receipt of those sums on that date and noted that the Tenant failed to pay the outstanding \$400.00 for his January rent. The Agent reiterated that the Tenant also did not pay anything for February, March or April 2020.

The Agent also confirmed there is no Order from the Branch authorizing the Tenant to withhold rent. The Agent further confirmed there has been no attempt by the Landlord to raise the rent during the tenancy. Finally, the Agent confirmed the Tenant has not paid for any emergency repairs.

In response to the Landlord's testimony, the Tenant testified as follows.

The Tenant confirmed that he paid \$2,000.00 on January 2020. He further confirmed he did not pay the outstanding \$400.00 for January, nor did he pay rent for February, March and April 2020.

The Tenant stated that he believes the Landlord wants to develop the property and issued the Notice simply to avoid issuing a 4 Month Notice to End Tenancy.

Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(6)If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenant conceded that he did not pay his January 2020 rent when it was due, and only paid \$2,000.00 of the \$2,400.00 owing for that month. He further conceded that he failed to pay rent for February, March and April 2020.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

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.

There are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that he served the Notice on the Tenant on January 22, 2020 by posting to the rental unit door. Pursuant to section 90 of the *Act*, such service is deemed received three days later such that I find the Tenant was deemed served on January 25, 2020.

The Notice informed the Tenant that he had five days in which to pay the outstanding rent or to apply for dispute resolution.

Although the Tenant applied for Dispute Resolution, he had no legal authority to withhold \$400.00 from his January rent. Although a tenant is entitled to a free month's rent when a Notice to End Tenancy is issued pursuant to section 49, no such notice was issued in this case; the *possibility* of the landlord developing the property is not a grounds for withholding rent.

I have reviewed the Notice and find that it complies with section 52 of the *Act* which reads as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Although the Notice indicated the sum of \$2,400.00 was outstanding at the time it was issued, not \$400.00 (due to the January 20, 2020 payment) I find that rent was in fact owing at the time the Notice was issued such that the Notice is valid.

As such, and pursuant to sections 46 and 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As discussed during the hearing, the Order of Possession is not enforceable during the Provincial State of Emergency pursuant to section 4(3) of the *Residential Tenancy (Covid-19) Order* which reads as follows:

(3) Despite section 84 of the *Residential Tenancy Act*, a tenant or landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the *Residential Tenancy Act*.

In terms of the Tenant's request for an Order pursuant to section 62(3) of the *Act* (that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and/or the tenancy agreement), the Tenant stated that he believed the Landlord intended to develop the rental property and as such should issue a 4 month Notice to End Tenancy pursuant to section 49(6) of the *Act*.

There is no authority under that *Act* for me to order a Landlord to issue a particular notice to end tenancy. Even if such authority existed, this tenancy has ended pursuant to the 10 Day Notice, such that the Tenant's request is no longer applicable. I therefore dismiss the Tenant's claim pursuant to section 62(3).

Having been unsuccessful in his application, the Tenant is not entitled to recover the filing fee.

Conclusion

The Tenant's Application for an Order canceling the Notice is dismissed.

The Landlord is granted an Order of Possession.

The Tenant's Application for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the tenancy agreement is dismissed.

The Tenant's request to recover the filing fee is dismissed.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 03, 2020

Residential Tenancy Branch