



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MT

Introduction

This hearing convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notices issued by the landlord.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed testimony and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules). 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.

Preliminary and Procedural Matters-

There was no evidence submitted by either party for this hearing, although the tenant said she did submit evidence, which included copies of the Notices issued by the landlord. The landlord confirmed that he received a copy of the Notices in the tenant's application package.

The parties were questioned during the hearing about the specifics of the Notices and both agreed on the content as presented.

I informed the parties that I could neither cancel or uphold Notices that I could not view.

I allowed both parties to submit copies of the Notices after the hearing and informed them if the Notices were as claimed in the hearing, I would consider them as evidence in making this Decision. Both parties agreed to do so.

The landlord submitted copies of the 10 Day Notice and the 1 Month Notice after the hearing, and I find that they contained the same information as was described at the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and/or the 1 Month Notice?

Background and Evidence

This tenancy began on January 1, 2020, monthly rent is \$4,500.00 due on the first day of the month, and the tenant paid a security deposit of \$2,250.00.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The landlord submitted that the tenant was served with the 10 Day Notice on March 19, 2020, by dropping it in the mailbox. The 10 Day Notice listed unpaid rent of \$4,500.00 owed as of March 1, 2020. The effective move-out date listed was March 30, 2020.

The landlord submitted that the 1 Month Notice was also dated March 19, 2020, for a move-out date of April 30, 2020, which listed as cause was that the tenant is repeatedly late in paying rent.

The landlord asserted that since the issuance of the Notice, the tenant has paid rent of \$1,300.00 on March 25, 2020, \$2,400.00 on April 9, 2020, \$800.00 on May 1, 2020, \$500.00 on May 7, 2020, and \$500.00 on May 7, 2020 from the province for rental assistance.

The landlord submitted that as of May 2020, the tenant owed a rent deficiency of \$8,000.00.

As to the 1 Month Notice, the landlord submitted that the January 2020 rent was paid on January 21 and the February 2020 rent was paid on February 3. This was in addition to the lack of timely rent payments in March 2020.

Tenant's response-

In response, the tenant confirmed the rent deficiency. The tenant submitted further that since January 2020, her ability to pay the monthly rent has been impacted by the Covid-19 pandemic.

In explanation, the tenant said that she has home stay students from foreign countries, those countries being impacted by Covid-19 prior to this country.

As a result of the disease, the summer camps of the foreign students were either postponed or cancelled, and that all payments have been delayed.

The tenant submitted that she has investments with which she can pay the monthly rent and has the ability to pay in full through May 2020, by the end of May.

The tenant submitted further that she can pay the monthly rent for June by June 15, 2020.

Analysis

I have reviewed the Notices and find they comply with section 52 *[form and content of notice to end tenancy]*.

While the tenant has asked for an order extending the time to file an application disputing the Notices issued by the landlord, I find when she made her application on

March 24, 2020, her application was made within the required timeframe allowed under the Act.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was issued. Further, I find that she did not pay all of the rent owed to the landlord within five days of receiving the Notice.

I therefore find the landlord submitted sufficient evidence to support the Notice and it must be upheld.

I therefore dismiss the tenant's application seeking cancellation of the 10 Day Notice.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

Based on the undisputed evidence, I also find the landlord submitted sufficient evidence to support the 1 Month Notice. I therefore dismiss the tenant's application seeking cancellation of the 1 Month Notice.

While I find the landlord submitted sufficient evidence to support the cause listed on the 1 Month Notice, it is sufficient that I have ordered the tenancy ends by operation of the 10 Day Notice.

Although I have ordered the tenancy will end pursuant to section 46 and 55(1)(b) of the Act, *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 advise the tenant of the following taken from the Residential Tenancy Branch (RTB) website:

Tenants should pay rent wherever possible. The legislation still requires that tenants pay rent in full and on time.

- **The state of emergency temporarily suspends a landlord's ability to end a tenancy if a tenant does not pay the rent in full and on time.**
- **A tenant who has not paid rent could face eviction once the state of emergency is over.**

I find it important to note that the tenant said she wants to continue the tenancy and make the payments and that the landlord may be willing to continue the tenancy pending the payments as described by the tenant.

The parties were aware, or were made aware, that currently an order of possession of the rental unit of this type is not enforceable during the state of emergency.

The tenant was informed about how an order of possession of the rental unit may be enforced, which is at the landlord's discretion as to when it is served upon her and which will give her the opportunity to show good faith to the landlord going forward.

Conclusion

The tenant's application is dismissed, without leave to reapply, as I have upheld the 10 Day Notice, as I find it was valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

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: May 13, 2020

Residential Tenancy Branch