



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTECTION PROPERTY MANAGMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, RR, LRE, MNDCT
OPRM-DR, OPR-DR, FFL
OPC, MNRL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on May 11, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) dated March 8, 2020, to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated March 20, 2020, to reduce the rent for repairs, services or facilities agreed upon but not provided, to suspend or set conditions on the Landlord's right to enter the rental unit or site and for compensation for my monetary loss or other money owed.

The Landlord’s Application for Dispute Resolution made on March 17, 2020. The Landlords applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) dated March 8, 2020, for a monetary order for unpaid rent and to recover their filing fee

The Landlord also submitted a second Application for Dispute Resolution was made on April 13, 2020. The Landlords applied for an order of possession to enforce a One-Month Notice to end tenancy for Cause (the “One-Month Notice”) dated March 20, 2020, for a monetary order for unpaid rent, for permission to retain the security deposit and to recover their filing fee.

Both the Landlord, their Property Manager (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters – Issue Withdrawal

During the hearing, the Tenant withdrew their application for compensation for monetary loss or other money owed,

I will proceed with this hearing on both the Landlord’s applications and the Tenant’s remaining claim’s to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) dated March 8, 2020, to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated March 20, 2020, to reduce the rent for repairs, services or facilities agreed upon but not provided, and to suspend or set conditions on the Landlord's right to enter the rental unit or site.

Issues to be Decided

- Should the 10-Day Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Should the One-Month Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return of both their filing fees?

- Should the Landlord's right to enter the rental unit or site be suspend or have set conditions?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Is the Landlord entitled to retain the security deposit for this tenancy?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on November 30, 2015, as a one-year fixed term tenancy, that rolled into a month to month tenancy at the end of the initial fixed term. That rent in the amount of \$1,200.00, is to be paid by the first day of each month, and that the Landlord is holding a \$600.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenant on March 8, 2020, by posting it to the front door of the rental unit. The 10-Day Notice listed an effective date of March 19, 2020, and an outstanding rent amount of \$1,900.00.

The Landlord testified that the \$1,900.00 in outstanding rent consisted of \$700.00 for November 2019 and \$1,200.00 for March 2020. The Landlord testified that the Tenant paid \$1,200.00 towards the outstanding rent on March 14, 2020, but that as of the date of this hearing, the was still \$700.00 outstanding for November 2019.

The Tenant testified that he had not paid the remaining \$700.00 in rent for November 2019, as they had withheld that portion due to compensation owed to them. The Tenant confirmed that they did not have an order granting them permission to withhold the rent, that they had not paid out of pocket for emergency repairs, and that they had no signed compensation agreement with the Landlord.

The Landlord is requesting that the 10-Day Notice to end tenancy be enforced and that an order of possession and a monetary order be issued, as the Tenant had not paid the full rent within five days of receiving the 10-Day Notice as required.

Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.

I find that the Tenant received the 10-Day notice on March 11, 2020, three days after it was posted to the front door of the rental unit, pursuant to the deeming provisions set out in section 90 of the *Act*, and that the Tenant did apply to dispute the Notice within the legislated timeline.

I accept the agreed upon testimony of both parties that the Tenant had not paid the full outstanding rent, as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant's request to dispute the notice is dismissed. Section 55(1) of the *Act* states as follows:

Order of possession for the landlord

55(1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52

[form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** 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 the costs of such enforcement are recoverable from the tenant.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Additionally, I accept agreed upon testimony of these parties that the Tenant has not paid \$700.00 of the outstanding rent indicated on the Notice, as of the date of this hearing. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent, in the amount of \$700.00, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

As this tenancy is ending in accordance with the 10-Day Notice, I find that there is no need to address the additional claims before me, to dispute or enforce the One-Month Notice, to set condition on the Landlord's right to right to enter the rental unit and the rent reduction request.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in both their applications, I find the Landlord is entitled to recover both filing fees for their applications, in the amount of \$200.00.

I grant the Landlord a **Monetary Order** in the amount of **\$300.00**, consisting of \$700.00 in outstanding rent for November 2019, \$200.00 in the recovery of the Landlord's filing fees, less the \$600.00 the Landlord is holding in a security deposit for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$300.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 29, 2020

Residential Tenancy Branch