



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, MNDCT, RR, RP, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- A monetary award for damages and loss pursuant to section 67;
- Authorization to reduce the rent pursuant to section 65;
- An order for the landlord to perform repairs pursuant to section 33; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials. Based on the testimonies I find the parties were each served with the relevant materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties testified that the necessary repairs have been completed as of April 4, 2020 and further repairs are to be scheduled. The tenant accordingly withdrew the portion of their application seeking a repair order.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?
Is the tenant entitled to a monetary award as claimed?
Is the tenant entitled to a reduction of rent as claimed?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. The monthly rent for this tenancy is \$3,075.00 payable on the first of each month.

On March 1, 2020 there was an accident in the rental unit causing damage to the kitchen. The damage was extensive and resulted in the tenant being unable to use the kitchen to cook and prepare food. The tenant and landlord engaged in discussions about how repairs would be arranged and paid for. The tenant submits that due to the loss of the kitchen they were entitled to reduce their rent and testified that they deducted \$1,500.00 from the rent paid for March 2020.

The landlord issued a 10 Day Notice dated March 17, 2020 indicating a rental arrear of \$1,000.00. The tenant submits that the actual amount of unpaid rent is \$1,500.00 but that they believed that a deduction was authorized. The tenant has not paid the arrear amount as at the date of the hearing. The tenant has paid rent for the months of April and May 2020 and the landlord issued confirmation indicating that the payment was accepted for use and occupancy only and has not reinstated the tenancy.

The tenant seeks authorization to reduce the rent by \$1,500.00 due to the inability to use the kitchen of the rental unit for a period from March 1, 2020 to April 4, 2020.

The tenant further seeks a monetary award in the amount of \$1,500.00 and submits that they were denied access to their patio in the summer of 2019 for approximately 10 weeks.

The landlord has also issued a 1 Month Notice dated March 17, 2020 providing the reasons for this tenancy to end as:

- The tenant is repeatedly late paying rent;
- Tenant or person permitted on the property by the tenant has put the landlord's property at significant risk.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on March 21, 2020, and filed a notice of dispute application on March 23, 2020 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have withheld the amount of \$1,500.00 from March 2020 rent.

Pursuant to 26(1) of the *Act*, 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.

I do not find the tenant's submissions that they were authorized to withhold rent to be supported in the Act or in the documentary evidence of the parties. The tenant conflates two separate issues. While I accept the evidence of the parties that there was an accident on March 1, 2020 when the kitchen of the rental unit became damaged and the parties were engaging in ongoing discussions regarding repairs this did not give rise to a right on the tenant to withhold or deduct any amount from the monthly rent under the tenancy agreement. I accept the evidence of the landlord that they did not consent to waiving their right to the full rent for this tenancy.

I further find the timeline of events as described by the parties to be inconsistent with the tenant being authorized to not pay rent. The accident which occurred in the rental unit is described as occurring on the evening of March 1, 2020, the date the monthly rent was due. The discussions of repairs occurred on the days following and I find that it did not give rise to a retroactive right on the tenant's part to withhold rent for this tenancy. The issue of repairs is separate and distinct from the tenant's obligation to pay

rent. I find that the tenant was obligated to pay the full rent in the amount of \$3,075.00 on March 1, 2020 and failed to do so.

I accept the evidence of the parties that the rent has not been paid within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss this portion of the tenant's application.

Section 55 of the *Act* provides that:

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 dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 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.

The 10 Day Notice is dated March 17, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

As I have found that this tenancy ends in accordance with the 10 Day Notice it is unnecessary to consider the 1 Month Notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find little evidence in support of the tenant's claim for a monetary award. The tenant seeks a monetary award in the amount of \$1,500.00 for their inability to access the patio but I find little documentary evidence that they were prevented from using their rental suite, or that if there was loss of access that it had any effect on the tenant. Based on the minimal evidence submitted in support of this portion of the application I find the tenant has not met their evidentiary burden and consequently dismiss it.

I do find that the loss of use of the kitchen has had some loss in the value of the tenancy for tenant and pursuant to section 65 (1)(f) of the *Act*, I am able to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement. The tenant gave little evidence of how frequently they would have used the kitchen under normal circumstances, nor did they provide details on how the inability to use the facilities had an impact on their daily routines. I find that the loss of use of a kitchen would be noticeable and have some impact on a tenancy and accordingly find that a monetary award in the amount of \$310.00 for the loss of value of the tenancy agreement from March 1, 2020 to April 4, 2020, approximately 10% of the monthly rent under this tenancy agreement to be appropriate.

As the tenant was not wholly successful in their application I decline to award the tenant authorization to recover their filing fee.

Conclusion

The tenant's application to cancel the 10 Day Notice and 1 Month Notice are dismissed.

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 tenant's favour in the amount of \$310.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The balance of the tenant's application is dismissed without leave to reapply.

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 19, 2020

Residential Tenancy Branch