



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, RP

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit; and
- An order for the Landlord to complete repairs.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the hearing, and both parties confirmed receipt of each other’s documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that only one of the applicants, K.B., was listed as a tenant under the tenancy agreement. The parties agreed that only K.B. is a tenant and that the other two applicants, S.G. and K.C., are occupants rather than tenants. As a result, I have referred only to K.B. as the Tenant and I have amended the Application to remove S.G. and K.C. as applicants as they have no rights or obligations under the *Act* or the tenancy agreement as occupants of the rental unit.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end and the payment of rent. I find that the other claims by the Tenant are not sufficiently related to the 10 Day Notice or the payment of rent and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement; and
- An order for the Landlord to complete repairs.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a 10 Day Notice.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began on September 1, 2019, that rent in the amount of \$2,500.00 is due on the first day of each month, and that a \$1,000.00 security deposit was paid. In the hearing the parties agreed that these are the correct terms of the tenancy agreement.

The Landlord stated that the Tenant has been continually behind on rent since the start of the tenancy, and that although the Tenant got fully caught up in December of 2019, they fell behind again at the start of 2020 and as a result, the 10 Day Notice was personally served on the Tenant on March 22, 2020. In the hearing the Tenant confirmed receipt of the 10 Day Notice in person on March 22, 2020.

The 10 Day Notice is signed and dated March 22, 2020, has an effective date of April 1, 2020, and states that as of March 1, 2020, the Tenant owed \$3,900.00 in outstanding rent. It also states that the Tenant owed \$204.33 in outstanding utilities.

Although the parties agreed that the Tenant attempted to pay \$2,500.00 near the start of May, ultimately they agreed that this amount was never accepted by the Landlord, and the Tenant agreed that they currently owe \$8,900.00 in outstanding rent; the \$3,900.00 owed according to the 10 Day Notice, plus \$2,500.00 per month for April and May of 2020. While the Tenant did not disagree with the amounts owed or being served with a 10 Day Notice, they took issue with the timing of the 10 Day Notice as there is currently a pandemic. The Landlord stated that they were attempting to be accommodating but could not wait any longer for the outstanding rent or to end the tenancy.

The parties agreed that the Tenant has been provided with rent credits in the amount of \$800.00 for the replacement of a dishwasher, fridge, and light fixture(s) and that the utilities shown on the 10 Day Notice have been paid.

The Landlord sought an Order of Possession for the rental unit as soon as possible.

Analysis

Based on the testimony of the parties in the hearing, I am satisfied that the Tenant was personally served with the 10 Day Notice on March 22, 2020. As the 10 Day Notice is in writing, is signed and dated by the Landlord, contains the address for the rental unit, the

grounds for ending the tenancy, and the effective date of the notice, and is in the approved form, I find that it complies with section 52 of the *Act*. Based on the above, and as the Tenant agrees that they owed the \$3,900.00 in outstanding rent shown on the 10 Day Notice, and this amount was not paid within the 5 days allowed under section 46 (4) of the *Act*, I therefore find that the 10 Day Notice is valid and that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 (1) of the *Act*.

As the effective date of the 10 Day Notice, April 1, 2020, has passed, and the Landlord requested an Order of Possession as soon as possible, the Order of Possession will be effective Two (2) days after service on the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the 10 Day Notice is dismissed without leave to reapply.

The Tenant's claims seeking an order restricting or setting conditions on the Landlord's right to enter the rental unit, an order for the Landlord to comply with the *Act*, regulation or tenancy agreement; and an order for the Landlord to complete repairs are dismissed with leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia 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 19, 2020

Residential Tenancy Branch