



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY MGMT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OLC, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to the Application (the “Amendment”) that were 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 for the Landlord to provide services or facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

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, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the notice of hearing, their documentary evidence and the Amendment were all personally served at the corporate Landlord's office on or about July 8, 2020 and July 10, 2020, respectively. The Tenant stated that the Landlord confirmed receipt via a letter to them approximately one week ago. Although a copy of the letter was not provided for my review, the Tenant read the letter out to me in its entirety during the hearing.

Based on the above, and as there is no evidence before me to the contrary, I find that the Landlord was personally served with the Notice of Dispute Resolution Proceeding Package, the Tenant's documentary evidence, and the Amendment in accordance with the *Act* and the Rules of Procedure. The hearing therefore proceeded as scheduled despite the absence of the Landlord pursuant to rule 7.3 of the Rules of Procedure and I accepted the Tenant's documentary evidence for consideration.

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

At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the rental unit.

Preliminary Matters

The 10 Day Notice in the documentary evidence before me is signed and dated July 2, 2020, and indicates that it was posted to the door of the rental unit that same date. In their Application and in the hearing the Tenant stated that it was received July 3, 2020. The Tenant filed their Application and paid the filing fee on July 8, 2020, which is past the legislative period for disputing a 10 Day Notice as set out under section 46 (4) of the *Act*. However, in their Application the Tenant applied for an extension to the time period for filing the Application, stating that they are an essential worker, that they work 12 hour shifts from 8:00 A.M. – 8:00 P.M., have no internet access and had attempted to resolve the issue with the Landlord prior to filing the Application, without success.

Section 66 of the *Act* states that I may extend a time period under the *Act* if exceptional circumstances exist. As there is no evidence to the contrary, I accept that the Tenant works 12 hour shifts as an essential worker from 8:00 A.M. – 8:00 P.M. and has no internet access. I also recognize that office closures and other social distancing

measures have limited in-person access to services at many locations, including Service BC and the Residential Tenancy Branch (the "Branch"). As a result, I am satisfied that the Tenant was prevented from filing an Application in-person or online within the prescribed period, due to exceptional circumstances. As the date of the Application is not past the effective date of the 10 Day Notice, I therefore grant the Tenant's Application seeking authorization to have filed their Application late.

Issues to be Decided

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

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation or tenancy agreement?

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by the tenancy agreement or law?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The 10 Day Notice in the documentary evidence before me is signed and dated July 2, 2020, and indicates that it was posted to the door of the rental unit that same date. In their Application and in the hearing the Tenant stated that it was received July 3, 2020. The 10 Day Notice states that as of July 1, 2020, the Tenant owed \$748.00 in outstanding rent and has an effective date of July 15, 2020.

The Tenant stated that all rent was paid and that they had received a letter to this effect from the Landlord. Although the letter was not submitted for my review, the Tenant read out the letter they stated that they received from an agent for the Landlord D.R. acknowledging that all rent was paid, that there had been a miscommunication, apologising for the miscommunication, and expressing that the Landlord does not intend to enforce the 10 Day Notice or seek its enforcement at the hearing. Further to this, the Tenant stated that even if rent had been owed for July 1, 2020, as stated on the 10 Day Notice, which it was not, the Landlord was not permitted to serve or enforce the 10 Day Notice as the rent was due after March 18, 2020, during the state of emergency.

The Tenant stated that the Landlord's agents routinely fail to provide rent receipts in a timely manner and are routinely unavailable to accept rent when it is due, as they

usually pay with cash. As a result, the Tenant sought an order for the Landlord and its agents to provide rent receipts in a timely manner and to be reasonably available to accept the payment of rent in the manner chosen by the Tenant, as required by the *Act*. The Tenant also sought recovery of the \$100.00 filing fee as they stated that they had attempted to resolve the situation with the Landlord prior to filing the Application, without success.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration.

Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that when a tenant disputes a notice to end tenancy, the onus to prove that the notice is valid falls to the landlord or their agents.

In the hearing the Tenant stated that the 10 Day Notice is not valid as no rent was due. As there is no evidence before me to the contrary, I accept this testimony as fact. Further to this, I find that the 10 Day Notice was issued by the Landlord contrary to section 3 of Emergency Order #M195 and that it does not comply with section 52 of the *Act* as it is a significantly outdated form and contains the incorrect second page.

Based on the above, I therefore grant the Tenant's Application seeking cancellation of the 10 Day Notice and order that it is of no force or effect.

Although section 26 (1) of the *Act* requires tenants to pay rent when it is due under their tenancy agreements, I find that this requirement is contingent on a landlord, or their agent, being reasonably available for the acceptance of rent. In the hearing the Tenant stated that the Landlord and their agents frequently are unavailable when rent is due, and do not answer the door or accept phone calls. The Tenant also stated that they are frequently requested to put cash through a mail slot, which is not safe or secure. As a result, I order that the Landlord or their agents make themselves reasonably available to the Tenant for the purpose of paying their rent when due under the tenancy agreement, including being available to personally accept cash payments, and that they accept all reasonable methods of payment, including cash. Pursuant to section 26 (2) of the *Act*, I also order the Landlord or their agents to provide the Tenant with a rent receipt at the time cash payments are received and to provide receipts for other methods of rent payment within a timely manner.

As the Tenant was successful in their Application, and pursuant to section 72 (1) of the *Act*, I award them recovery of the filing fee. The Tenant is therefore entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement in recovery of this amount, pursuant to section 72 (2) (a) of the *Act*.

Conclusion

I order that the 10 Day Notice dated July 2, 2020, is cancelled and that the tenancy therefore continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Pursuant to section 72 (2) (a) of the *Act*, the Tenant is entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee.

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: August 13, 2020

Residential Tenancy Branch