



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RR, RP, ERP, PSF, LRE, LAT, OLC, MNDCT, FFT

Introduction

On August 8, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking a repair Order pursuant to Section 65 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 8, 2020, the Tenant made an Amendment to her Application seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “*Notice*”) pursuant to Section 46 of the *Act*, seeking an emergency repair Order pursuant to Section 62 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act*.

This Application was originally set down for a hearing on September 21, 2020 at 9:30 AM but was subsequently adjourned for reasons set forth in the Interim Decision dated September 21, 2020. The Tenant attended the reconvened hearing. The Landlord attended the reconvened hearing as well, with K.K. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

Based on the conduct of the parties during the original hearing, both parties were reminded at the start of the reconvened hearing that to ensure an efficient, respectful hearing, the parties were advised that each party would have an opportunity to have their say and that when one party is talking, I asked that the other party not interrupt or

respond unless prompted by myself. They were warned that if they behaved in the same manner during the reconvened hearing, the offending party would be muted and unable to participate in the hearing until they were permitted to do so by myself. Both parties were marginally more respectful and abided by these rules; however, the Tenant was muted twice during the hearing due to her continual interjections.

As per the Interim Decision, the parties were reminded that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, this reconvened hearing addressed only the most significant of matters: the Landlord's One Month Notice to End Tenancy for Cause, the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, and the Tenant's request for an emergency repair Order. The Tenant's other claims are dismissed, and she is at liberty to apply for these claims under a new and separate Application.

The Tenant advised that she attempted to serve the Notice of Hearing package to the Landlord by hand on or around August 14, 2020; however, the Landlord refused to accept the package. The Tenant then posted the Notice of Hearing package on the Landlord's door. The Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

She then advised that she attempted to serve her amended Application and evidence to the Landlord by hand on or around September 8, 2020; however, the Landlord refused to accept the package and the Tenant then threw it into the open window of the Landlord's car. The Landlord confirmed that she received this package in her car. The Landlord also stated that she had reviewed the Amendment and evidence and she was prepared to respond to it. While these documents were served late contrary to the *Act* and Rules of Procedure, as the Landlord had reviewed them and was prepared to respond to them, I am satisfied that the Landlord has been served the Amendment and the Tenant's evidence. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

K.K. advised that the Landlord's evidence was served to the Tenant by posting it to her door on September 19, 2020 and the Tenant acknowledged receiving this evidence on or around that date. She also advised that she had reviewed it and was prepared to respond to it. While these documents were served late contrary to the *Act* and Rules of Procedure, as the Tenant had reviewed them and was prepared to respond to them, I

am satisfied that the Tenant has been served the Landlord's evidence. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent cancelled?
- Is the Tenant entitled to have the Landlord's One Month Notice to End Tenancy for Cause cancelled?
- Is the Tenant entitled to an emergency repair Order?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord did not have a written tenancy agreement with the Tenant, contrary to the requirements of the *Act*. She stated that the tenancy began on or around March 2019, that rent was established at \$850.00 per month, and that it was due on the first day of each month. A security deposit of \$425.00 was also paid. While the Tenant noted the dispute address differently on the Application, the Landlord stated that the rental unit was a cabin.

The Tenant confirmed that there was no written tenancy agreement and stated that the tenancy started on March 5, 2019. She agreed that rent was established at \$850.00 per month, that it was due on the first day of each month, and that a security deposit of \$425.00 was also paid. She advised that it was her belief that the rental unit was an illegal suite and that it was not a cabin, but a separate self-contained rental unit off of the garage.

Regardless of the Tenant's belief, as the notices to end tenancy list the rental unit as a "cabin", the dispute address on the Application has been amended to reflect this change.

K.K. advised that the Notice was served to the Tenant on September 3, 2020 by posting it to her door. He stated that it was served because of rent that was due on September 1, 2020. The amount listed as outstanding on the Notice was \$850.00. It also indicated that the effective end date of the tenancy was September 14, 2020.

The Tenant advised that she provided the Landlord with a money order in the amount of \$350.00 on September 1, 2020, that she received the Notice on September 4, 2020, and that she disputed the Notice by amending her Application on September 8, 2020. She stated that she then taped another money order, in the amount of \$500.00, to the Landlord's door on September 26, 2020. She made many references to issues which she believed were breaches of the *Act* that the Landlord did not rectify. She stated that it was her belief that the rental unit was an illegal unit and that she had "no idea" if she should be paying rent or not. In addition, she waited until the original hearing to find out if she should pay the remainder of September 2020 rent or not. She confirmed that she did not have any authority under the *Act* to withhold the rent.

The Landlord advised that she received a money order in the amount of \$350.00 from the Tenant on August 31, 2020. However, she did not receive a money order in the amount of \$500.00 from the Tenant at any time in September 2020. She did receive \$850.00 on or around October 2, 2020 in the form of an electronic transfer from the Tenant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

During the original hearing, neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence to both parties in my Interim Decision. A copy of the Notice, that is the subject of this dispute, was requested to be provided from both parties as it is essential to the matter at hand. However, a copy of this Notice was only provided by the Landlord after the original hearing.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant received the Notice on September 4, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on September 4, 2020, the Tenant must have paid the rent in full or disputed the Notice by September 9, 2020, at the latest. The

undisputed evidence is that the Tenant did not pay the remaining rent by September 9, 2020 to cancel the Notice.

While she did dispute the Notice within the required timeframe, she failed to establish that she had a valid reason, or any authority for withholding the rent pursuant to the *Act*. Furthermore, she made no submissions that there was an emergency repair conducted that she had paid for out of her own pocket that then entitled her to withhold the rent. As the Tenant did not pay the rent in full by September 9, 2020, and as she had no authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As an Order of Possession has been granted on the 10 Day Notice to End Tenancy for Unpaid Rent, it was not necessary for me to consider the merits of the One Month Notice to End Tenancy for Cause.

I have not made any findings with respect to the alleged payment of the balance of September 2020 rent on September 26, 2020. Even if the Tenant did pay this amount on September 26, 2020, as it was outside of the September 9, 2020 deadline, I do not find that this would cancel the Notice or reinstate the tenancy. Furthermore, as the Tenant had paid for October 2020 already, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on October 31, 2020**.

Moreover, I have not made any findings with respect to the Tenant's allegations that the Landlord had committed multiple breaches of the *Act*. However, the Landlord is cautioned that the Tenant is at liberty to apply against her for monetary compensation if she has breached the *Act* and if it is determined that she managed her rental unit in a manner unbecoming and in contravention of the *Act*.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant's Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent in its entirety. I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2020** after service of this Order on the Tenant. 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.

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: October 7, 2020

Residential Tenancy Branch