



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Evidence -

The parties were asked about their evidence. The landlord confirmed receiving the tenant's evidence. Although I did not locate the tenant's evidence prior to the hearing, I located the evidence after the conclusion of the hearing and considered it as reference.

The tenant denied receiving the landlord's evidence.

I decided to proceed with the hearing, and informed the parties that by the end of the hearing, I would adjourn the hearing in the event I found it necessary. Ultimately, the oral evidence of the parties was sufficient to make a decision on this application, as will be set out in this Decision.

Severing issues –

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply**.

I informed the parties of this decision at the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 10 Day Notice?

Background and Evidence

The tenant said the five year, fixed term tenancy began in October 2016 and the monthly rent was \$1,200, due on the first day of the month.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules require 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.

The landlord said he served the tenant with the Notice by registered mail on August 27, 2020. The Notice was dated September 1, 2020, for an effective move-out or end-of tenancy date of September 15, 2020.

The Notice, filed into evidence, indicated the tenant failed to pay the full rent for July 2020, leaving a rent deficiency of \$200.

The landlord asserted that since the issuance of the Notice, the tenant has not paid, and still owes, the rent deficiency of \$200 for July.

In response to my inquiry, the landlord confirmed that he has not provided a payment plan to the tenant for the repayment of rent.

Tenant's response-

In response, the tenant confirmed the rent deficiency. The tenant explained that he lives in a high-crime area and people continually broke into the rental unit. To deal with the situation, the tenant said that he purchased supplies and built a gate to keep intruders out. The tenant said that since he has replaced the gate, there have been no break-ins.

Additionally, the tenant submitted that the shower head sprays water all over the place and he got tired of dealing with the extra spray. The tenant said he replaced the shower head and it works fine now.

The tenant said that he was entitled to deduct the costs of materials for the gate and showerhead, which was the reason he withheld \$200 from the July 2020 rent.

The tenant submitted copies of receipts.

The tenant said he could not understand why the landlord gave him a Notice, as he repaired the house to the benefit of the landlord.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by section 33 of the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

I do not find the tenant had established a legal right to withhold any part of the monthly rent, as he has not met the requirements set out in section 33 of the Act.

Upon hearing from the parties, I find that the tenant owed the landlord rent of \$200 from July 2020 when the 10 Day Notice was issued. Further, I find that he did not pay all of the rent owed to the landlord within five days of receiving the Notice.

Despite this, on July 30, 2020, the *COVID-19 Regulation* went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the declaration of the state of emergency made on March 18, 2020 expires or is cancelled. This Regulation can be accessed through:

https://www.bclaws.ca/civix/document/id/crbc/crbc/195_2020

Under this Regulation, the rent due during this emergency period is known as the "affected rent".

Section 1.02 of the *COVID-19 Regulation* requires that a landlord **must** give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan.

[My emphasis]

In connection with the *COVID-19 Regulation*, Residential Tenancy Policy Guideline 52 was enacted.

Under this Guideline, “affected rent” is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between **March 18, 2020 and August 17, 2020**. [My emphasis]

Guideline 52, Section C states that a landlord **must not** give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent unless the landlord has previously given the tenant a valid repayment plan or there is a valid prior agreement, and

- the tenant fails to pay an installment on the date it is due as set out in the applicable repayment plan, or
- the tenant fails to make a payment as set out in a prior agreement that was not cancelled by the landlord or tenant.

As the rent deficiency for July 2020 was affected rent accrued during the specified period of from **March 18, 2020 to August 17, 2020**, the landlord was not allowed to serve the tenant a 10 Day Notice for Unpaid Rent without a valid repayment plan.

As a result of these restrictions under the *COVID-19 Regulation* as mentioned, I must cancel the Notice as the landlord had not given the tenant a repayment plan for the affected rent.

I therefore order that the 10 Day Notice, dated September 1, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Cautions to the parties –

The tenant is cautioned that although I have cancelled the Notice, he still owes the rent deficiency for July 2020, as he did not obtain the landlord’s consent for deductions from the monthly rent, he did not have authorization from an Arbitrator to withhold any portion of the monthly rent, or he did not incur expenditures to make “emergency repairs”. The tenant should review section 33 of the Act as to a tenant’s requirements in order to have the ability to make deductions from the monthly rent.

I note the issue as to whether the shower head replacement and gate repair were emergency repairs was not before me, it appears to me that they are not.

The landlord is cautioned that while this tenancy is ongoing, he may not take enforcement actions or seek to end the tenancy for unpaid rent unless he presents a valid repayment plan to the tenant for the unpaid, affected rent incurred in July 2020.

If either party has any questions about their rights or obligations under the Act for these issues and any future issues dealing with this tenancy, I encourage the parties to consult with staff at the Residential Tenancy Branch (RTB), whose contact information is included with this Decision on the last page.

Conclusion

The 10 Day Notice is hereby cancelled, of no force or effect, and the tenancy continues until it may otherwise end under the Act.

The tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and an order suspending or setting conditions on the landlord's right to enter the rental unit are dismissed, with 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: October 9, 2020

Residential Tenancy Branch