



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, LRE, LAT, RP, OLC, RR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 8, 2020, wherein the Tenant sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 2, 2020 (the "10 Day Notice");
- an Order canceling a 1 Month Notice to End Tenancy for Cause issued on August 30, 2020 (the "1 Month Notice");
- an Order restricting the Landlords' right to enter the rental unit;
- an Order permitting the Tenant to change the locks on the rental unit; and
- an Order that the Landlord:
 - make repairs, emergency and otherwise to the rental unit;
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- a rent reduction for the cost of repairs, services or facilities not provided.

The hearing of the Tenant's Application was conducted by teleconference at 11:00 a.m. on October 29, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter and specifically referenced by the parties are described in this Decision.

Preliminary Matter—Naming Landlord on Application

The Tenant named the Landlord's Agent, C.P., as "Landlord" on the Application for Dispute Resolution. A review of the residential tenancy agreement, and the notices, indicates the Landlord is a corporation. Pursuant to section 64(3)(c) of the *Act* I amend the application to correctly name the Landlord as the corporation.

Preliminary Matter—Matters to be Decided

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the 10 Day Notice and the 1 Month Notice (the "Notices"). I find that the validity of the Notices is not sufficiently related to the Tenant's monetary claim or the Tenant's claim for a rent reduction; accordingly, I exercise my discretion and dismiss those claims with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly, those claims are dismissed without leave to reapply.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Should the 1 Month Notice be cancelled?

Background and Evidence

The tenancy began June 1, 2019. Monthly rent at the start the tenancy was \$1,300.00. The Tenant paid a security deposit of \$650.00 and a pet damage deposit of \$650.00. The Agent testified that the rent was reduced to \$1,200.00 in November of 2019 by the owner.

C.P. testified that the Tenant failed to pay rent from April to August 2020. On August 4, 2020 the Landlord sent a letter to the Tenant informing the Tenant that he was in arrears of his rent from April to August 2020 for a total of \$6,000.00 in rent in addition to the \$25 per month late fee. C.P. testified that the Tenant failed to pay the September and October rent as well.

On August 19, 2020, the Landlord prepared and delivered a Repayment Plan for the *affected rent* from April to August 2020. The Agent testified that she tried to personally serve the Tenant on August 19, 2020 but he slammed the door on her such that she then posted it to the rental unit door. The Agent further testified that while she was taping the papers on the door, the Tenant came out and told the Agent to get off the porch, he then counted to five, and then sprayed her with a garden hose. The Agent called the police who attended and spoke to both the Agent and the Tenant.

The Agent confirmed that the Tenant failed to pay the rent pursuant to the Payment Plan.

The Landlord then issued the 1 Month Notice on August 30, 2020. The Agent testified that she attended the rental property and discovered that the Tenant had padlocked the gate. The Agent stated that the Tenant then came outside and "started ranting and raving" and again sprayed her with a hose. As she could not access the rental property, she left the Notice on the gate.

The Tenant failed to pay rent for September 2020 such that the Landlord issued a 10 Day Notice on September 2, 2020. The Agent testified that it was served by registered mail on September 2, 2020. The Agent stated that the Tenant failed to pay the outstanding rent, although he did apply for Dispute Resolution on September 8, 2020.

The Agent further testified that the Tenant failed to pay rent for October 2020.

The Landlord called C.D. as a witness. He stated that he used to work for the Agent, and they have kept in contact since. He testified that he was present on August 19, 2020 when the Agent served the Tenant with the Repayment Plan. C.D. stated that on that date the Agent knocked on the door. The Tenant didn't answer for a few moments. The Tenant then opened the door took the notice off the door, ripped it and crumbled it, and threw it in the house. The Tenant then came back out and said they had five seconds to leave the property or he was going to spray them with a hose. As they were leaving, the Tenant took the hose and sprayed C.P. They left, got into the car and called the police.

C.D. stated that he was also present when the 10 Day Notice and 1 Month Notice were served on the Tenant. C.D. stated that when the 1 Month Notice was served the Tenant ripped it up and threw it back at the Landlord's Agent. C.D. stated that on one occasion the Tenant had a lock on the gate. C.D. stated that the gate was locked, and she posted it to the gate.

E.N. also testified on behalf of the Landlord. He stated that he is the Agent's spouse. He testified that he was also present when the 1 Month Notice was served as they were planning to go for lunch after and as such he was waiting in the car. He further testified that the Agent was outside the gate at the time and the Tenant was standing on the veranda with a hose. The Tenant was ranting and raving and said, "I give you 2 minutes to get out of here or I am going to hose you down". The Tenant then started hosing down the Agent. E.N. stated that he then called the police.

In response the Tenant testified as follows.

The Tenant confirmed that he moved into the rental property in June of 2019. He claimed that he and the owner came to an agreement whereby his rent was reduced to \$1,100.00. The Tenant stated that he paid \$1,100.00 in February and March and further confirmed that he has not paid rent since March of 2020.

The Tenant confirmed that he received the Repayment Plan but has not paid according to the plan as it is not correct.

The Tenant testified that he did not pay his September rent as he is withholding rent because he wants the Landlord to make repairs to the rental unit. In this respect he stated that the heat doesn't work and there are leaks in major pipes. The Tenant also stated that he believes that it is not appropriate to ask for full rent when the rental unit is in an unacceptable condition.

The Tenant confirmed that he has tried to reach a solution with the Landlord and their solution is to charge the Tenant an extra \$100.00 per month.

The Tenant confirmed that he did not pay his October rent. He did not provide an explanation for why he was withholding his October rent payment.

The Tenant admitted that he hosed down the Agent with a garden hose on August 19, 2020 when she tried to serve the Repayment Plan. The Tenant confirmed that he also hosed her down when she served the 1 Month Notice. The Tenant conceded that his reaction was not “appropriate” but claimed it was a result of PTSD due to the constant harassment by the Landlord’s Agent. The Tenant also stated that someone knocking on his door is upsetting to him due to his PTSD. He claimed that he told the owner and her agent at the time he entered into the tenancy agreement that they were not to attend his door during this tenancy.

The Tenant also stated that the Agent and her witnesses are misrepresenting the tone in which they delivered the Notice. The Tenant claimed that the Agent’s husband, E.N. threatened his life repeatedly.

The Tenant confirmed that he was aware that service to the rental unit door is an acceptable form of service. He then stated that the issue was that they came to the door without masks.

Analysis

The Tenant seeks to set aside the 10 Day Notice and the 1 Month Notice. I will address each notice separately.

The Landlord issued the 10 Day Notice pursuant to section 46 of the *Act*; the relevant portions of that section provide as follows:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date

I accept the Landlord's testimony that the Notice was served on the Tenant by registered mail on September 2, 2020. Pursuant to section 90 of the *Act* documents served in this manner are deemed served five days later, namely September 7, 2020. As such, the Tenant had five days from September 7, 2020 in which to pay the outstanding rent or apply for dispute resolution.

Although the parties disagreed as to whether the Tenant's rent was \$1,200.00 a month or \$1,100.00 per month, the Tenant failed to pay either. Similarly, the Tenant failed to pay either for October 2020. The evidence before me, and in particular the testimony of the Tenant, indicates the Tenant withheld the September rent as a means to compel the Landlord to make repairs to the rental unit. The Tenant gave no explanation as to why he did not pay the October rent.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1)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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As noted during the hearing, there are only four occasions, permitted under the *Residential Tenancy Act*, where a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));

3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

Withholding rent as a means to compel the Landlord to address repairs in the rental unit does not meet the narrow circumstances provided above. In the case before me I find the Tenant had no legal authority to withhold rent.

As such, I dismiss the Tenants' claim for an Order canceling the 10 Day Notice. The tenancy shall end in accordance with the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*. Accordingly, the Landlord is granted an Order of Possession pursuant to section 55. The Order must be served on the Tenant and will be effective two days after service. The Order may be filed and enforced in the B.C. Supreme Court.

As I am ending the tenancy pursuant to the 10 Day Notice, I need not consider the validity of the 1 Month Notice. That said, I accept the Landlord's Agent's testimony that the Tenant sprayed her with a hose when she served the Repayment Plan and the 1 Month Notice. This was not disputed by the Tenant. While the Tenant may claim his PTSD was triggered by the Agent knocking on the door to serve the Repayment Plan, the Agent was not even on the property when she served the 1 Month Notice, such that his explanation for this behaviour is not applicable to the second occasion when he sprayed the Agent with a hose. I find his behaviour to be highly inappropriate.

As discussed during the hearing, posting to the rental unit door is an acceptable means of service. The Landlord, and her Agent, have the legal right to serve documents on the Tenant in the course of their business. They should not be subjected to such aggressive and inappropriate behaviour by the Tenant. In all the circumstances, I find the Landlord has met the burden of proving that the Tenant has seriously jeopardized the health and safety and lawful right of the Landlord. As such, even if I had not ended the tenancy for non payment of rent, I would have ended for cause pursuant to section 47 of the *Act*.

Conclusion

The Tenants' request for an Order canceling the 10 Day Notice is dismissed without leave to reapply.

The Tenants' request for an order canceling the 1 Month Notice is dismissed.

The Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Tenant's request for monetary compensation from the Landlord in the form of a retroactive rent reduction is dismissed with leave to reapply.

As the tenancy is ending, the balance of the Tenants' claims for the following:

- an order that the Tenant be permitted to change the locks on the rental unit; or their guests have access to the rental unit;
- an Order that the Landlord
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - make repairs to the rental unit; and
 - be restricted from entering the rental unit

are 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: October 30, 2020

Residential Tenancy Branch