



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT
OPRM-DR, OPR-DR, FFL

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on September 18, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) issued September 10, 2020, to request an order for the Landlord to comply with the Act and to recover their filing fee.

The Landlord’s Application for Dispute Resolution was made on September 21, 2020. The Landlord applied to enforce a 10-Day Notice to End Tenancy for Unpaid Rent issued September 10, 2020, for a monetary order for unpaid rent, and to recover their filing fee.

Two Agents for the Landlord (the “Landlord”), the Tenant and a translator (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice to End Tenancy dated September 10, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Should the Landlord be ordered to comply with the *Act* and/or tenancy agreement?
- Is the Landlord entitled to the return of his filing fee?
- Is the Tenant entitled to the return of his filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on June 1, 2020, and that rent was set at \$3,450.00 and is to be paid by the first day of each month. The parties agreed that the Landlord was paid a \$1,700.00 security deposit at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenant on September 10, 2020, by posting the Notice to the front door of the rental unit. The 10-Day Notice listed an effective date of September 21, 2020, and an outstanding rent amount of \$8,350.00.

The Tenant agreed that they had not paid the rent for September for this tenancy, but that they did not pay as they have a verbal agreement with the Landlord that the rent was waived for September. The Tenant testified that the rent was waved due to the fact that the Landlord had allowed the previous renter of the rental unit to leave their personal possessions in the rental unit. The Tenant testified that due to the number of

items left in the rental unit that they had been unable to move in as planned and that they have never lived in the rental unit.

The Tenant testified that they and the Landlord had agreed to a sublet of the rental unit to a third person, who did not require as much space as the Tenant did until the Landlord was able to get the previous renters belongings out of the rental unit.

The Tenant testified that they still wish to rent the property, and they request that the Notice be cancelled and that exclusive possession of the property is provided to them as required by their contract.

The Landlord testified that they knew that the previous renter had left possession behind in the rental unit but that this Tenant and the previous renter were friends and that this Tenant had an agreement with the previous renter to take care of the possession they had left behind. The Landlord testified that there was no agreement to wave the September rent and that they are requesting that the Notice be enforced.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

- (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 find that the Tenant received a 10-Day notice for unpaid rent from the Landlord on September 13, 2020, three days after it had been posted to the front door of the rental unit. I have reviewed the Tenant's application, and I find that the Tenant applied to dispute the Notice on September 18, 2020, within the legislated timeline.

I accept the agreed-upon testimony of both parties that the Tenant has not paid the rent for September 2020, as stated on the 10-Day Notice, within the required five days.

I have reviewed the Tenant's testimony and documentary evidence, and I find that there is insufficient evidence before me to show that the Tenant had permission from the Landlord to withhold the rent for September 2020. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant has not been successful in their application to dispute the Notice.

Order of possession for the landlord

- 55*** *(1) If a tenant makes an application for dispute resolution to dispute a*
landlord's notice to end a tenancy, the director must grant to the landlord
an order of possession of the rental unit if
(a) the landlord's notice to end tenancy complies with section 52
[form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*. Pursuant to section 55 of the *Act*, as I have already dismissed the Tenant's application to cancel the Notice, I must grant the Landlord an order of possession to the rental unit.

Therefore, I grant the Landlord an **Order of Possession** effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for September 2020, in the amount of \$3,450.00. I authorized the Landlord to retain the Tenant's \$1,700.00 security deposit in partial satisfaction of this award.

As for the Tenant's claim for an order for the Landlord to comply with the *Act*, I have reviewed the testimony and documentary evidence provided by both parties, and I find that there is insufficient evidence before me, to prove to my satisfaction, that the Landlord has breached the *Act* during this tenancy. Therefore, I dismiss the Tenant's claim for an order for the Landlord to comply with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for their application.

Conclusion

I dismiss the Tenant's application.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$1,850.00**. 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 Small Claims Division of the Provincial Court 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: November 16, 2020

Residential Tenancy Branch