



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1228069 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, FFT, RR, RP, OLC, MNDCT, LAT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “*Notice*”) issued on September 9, 2020, to request more time to file to dispute the Notice, to request a rent reduction due to required repairs to the rental unit, to request an order to repair the rental unit, for an order for the Landlord to comply with the *Act*, for a monetary order for losses or money owed, for an order to suspend or set conditions on the Landlord’s right to enter the rental unit, and to recover the cost of the filing fee. The matter was set for a conference call.

The Tenant attended the hearing and was affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution and Notice of Hearing had been served to the Landlord by personal service, sent on September 26, 2020. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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 is described in this Decision.

Preliminary Matters- Related Issues

I have reviewed the Tenant's application, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord for an order for a rent reduction due to required repairs to the rental unit, to request an order to repair the rental unit, for an order for the Landlord to comply with the *Act*, for a monetary order for losses or money owed, and for an order to suspend or set conditions on the Landlord's right to enter the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the 10- Day Notice, for more time to file to dispute the Notice and to recover the filing fee paid for this application.

Issues to be Decided

- Should the Notice issued on September 9, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of their filing fee?

Background and Evidence

The tenancy agreement shows that the tenancy began on March 1, 2016, as a month to month tenancy. Rent in the amount of \$850.00 is to be paid by the first day of each month, and that the Tenant paid a \$425.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Notice records that the Tenant was served the Notice by attaching a copy to the door or other conspicuous place, on September 9, 2020. The Notice indicated that the Tenant was required to pay \$350.00 in outstanding rent within five days or vacate the rental unit on September 19, 2020.

The Tenant testified that there was and is no outstanding rent due for this tenancy and requested that this Notice be cancelled. The Tenant provided a copy of the Notice to End tenancy into documentary evidence.

Analysis

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

I find that the Landlord served the Notice to End Tenancy on September 9, 2018, by attaching it to the door of the Tenant's rental unit, which is an approved method of service provided for under section 88 of the *Act*. Section 90 of the *Act* states that unless it is shown otherwise, a document served in this manner is deemed to have been received three days after the day in which the notice was posted.

When documents are considered to have been received

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Without evidence to the contrary, I find that the Tenant was deemed to have received the Notice on September 12, 2020.

When a tenant receives a 10-Day Notice to end tenancy, the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice or filed to dispute the Notice, pursuant to section 46(4) of the *Act*.

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.

Accordingly, I find that this Tenant had until September 17, 2020, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice. In this case, I find the Tenant did file to dispute the Notice on September 17, 2020, within five days of receiving the Notice, as allowed by the *Act*. As the Tenant filed to dispute this Notice on time, I find that there is no need for me to consider the Tenant's request for additional time to file to dispute this Notice.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 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.

This matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant.

Since the Landlord did not attend the hearing by 11:11 a.m. to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenant's application to cancel the Notice issued on September 9, 2020, and I find that the Notice has no force or effect. The tenancy will continue until legally ended in accordance 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 Tenant was successful in this application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application. The Tenant is granted permission to take a one-time deduction of \$100.00, from his next month's rent.

Conclusion

The Tenant's application to cancel the Notice, issued September 9, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent.

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 12, 2020

Residential Tenancy Branch