



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0748694 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **LL: MNRL-S, FFL OPR-DR-PP, OPRM-DR, FFL**
TT: CNR, RR, RP, LRE, AS, OLC, FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for unpaid rent pursuant to section 67;
- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order for retroactive rent reduction pursuant to section 65;
- An order that the landlord make repairs to the rental unit pursuant to section 33;
- An order suspending or setting conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- Authorization to assign or sublet the rental unit pursuant to section 65;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agent (the “landlord”).

As both parties were present service was confirmed. The parties each testified that they have been served with the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional rent has come due and that the total arrear as of the date of the hearing is \$24,000.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due is reasonably foreseeable I amend the landlord's Application to increase the landlord's monetary claim to \$24,000.00.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them at the same hearing to ensure fairness, efficiency and consistency in the dispute resolution process. I was originally scheduled to only hear the landlord's application pertaining to a monetary award for unpaid rent. In the matters at hand, all of the applications pertain to the same residential property, the same tenancy agreement and involve the same parties. In order to make a determination on the landlord's monetary claim I would be required to consider the issue of the landlord's entitlement to rent and whether there is a rental arrear, the same issues that I would consider in determining the validity of a Notice to End Tenancy for Unpaid Rent.

Based on the testimony of the parties, I further found that there would be no issues of procedural fairness or natural justice to either of the parties to combine the matters and have them heard together and ordered that the matters be combined.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the tenant entitled to any of the relief sought?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy began in February, 2019. The monthly rent is \$3,000.00 payable on the first of each month. A security deposit of \$1,500.00 was collected and is still held by the landlord.

The tenant stopped paying monthly rent as required under the tenancy agreement as of May, 2020. There was an arrear of \$12,000.00 as at August 29, 2020 when the landlord issued a Repayment Plan pursuant to the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"). The Repayment Plan is in respect of unpaid rent for the affected months of May, June, July and August, 2020 for a total amount of \$12,000.00. The Repayment Plan provides that monthly installments of \$1,200.00 will be payable commencing October 1, 2020. The tenant confirmed receipt of the Repayment Plan.

The tenant failed to pay either rent or the monthly repayment installment on October 1, 2020. The landlord issued a 10 Day Notice dated October 22, 2020 indicating an arrear of \$7,200.00. The 10 Day Notice was served on the tenant by registered mail sent on October 22, 2020. The landlord provided a valid Canada Post registered mail receipt as evidence of service.

The tenant first claimed that they did not know where the mailbox for the property was located and had not been served. The tenant subsequently said that they accessed the mailbox but only found a Notice of Delivery from Canada Post and did not pick up the registered mail. The tenant then testified that they do not believe they have been served with a 10 Day Notice at all. In their own application the tenant provides that they were served with a 10 Day Notice on October 27, 2020 and filed an application to dispute the notice. When asked why their own application included a claim to dispute a 10 Day Notice if they were not served with a notice and were unaware of its existence, the tenant provided no intelligible response.

The parties confirm that the tenant has not made any payment of rent or repayment installment since the date of the 10 Day Notice.

The tenant submits that the tenancy agreement should be deemed invalid as after the parties signed the document on January 14, 2019, the landlord hand wrote additional notes on the document. A copy of the tenancy agreement was submitted into evidence. The notes on the agreement provides that the tenant has done repairs at their cost and how monthly rent was negotiated.

The tenant submits that there was a verbal agreement with the landlord that the tenant would be allowed to sublet the rental unit but the landlord has interfered with their attempts to find an occupant who would reside in the rental unit with them. The tenant provided vague testimony regarding how the landlord has prevented the tenant from finding an additional occupant alluding to the state of the rental property and the landlord failing to make repairs. When asked at the hearing why the tenant chose to pay monthly rent in the amount of \$3,000.00 as required under the tenancy agreement from February 2019 up to May 2020, if they believed the agreement was voided the tenant simply repeated that the tenancy agreement was invalid due to the handwritten notes of the landlord.

The tenant further claims that the rental unit requires various repairs and describes it as a "shack". Among the issues that the tenant testified are deficient include a leaking roof, cracked bathroom tiles, malfunctioning appliances and no potable running water. The tenant also claims in their application that "Structural integrity of out buildings make them unusable". The tenant claims that these deficiencies were present from the start of the tenancy in February 2019. The tenant submits that the rental unit is a "tear down" and believes that the landlord is refusing to make repairs while awaiting development of the property.

The tenant testified that they have continued to reside in the rental unit throughout the course of the tenancy and that the deficiencies claimed have not required them to vacate the rental unit. The tenant said that they have attempted to find individuals to sublet the rental unit but none have stayed more than a few days due to the condition of the rental property.

When asked in the hearing why they had not brought up these deficiencies earlier in the tenancy if the issues were evident at the outset the tenant claimed that the landlord was unresponsive. The tenant did not provide details of their attempted communication and no documentary evidence was provided of any correspondence between the parties.

Analysis

As the parties gave conflicting evidence on a number of points I must first make a determination of credibility. I find the tenant to be a wholly unreliable witness and their submissions and testimony to have little air of reality. Their testimony is internally inconsistent, often contradicting their own statements made mere moments earlier. They were unable to provide testimony in an organized or coherent manner and failed to answer direct questions. Instead of responding to questions or providing clarification of points when requested the tenant gave rambling evasive testimony that failed to address the issues at hand.

I find the landlord to be a far more credible witness as they limited their testimony and submissions to those issues relevant to the application and that were supported in the documentary materials.

I find that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to pay the landlord \$3,000.00 on the first of each month. I find the copy of the written tenancy agreement signed by both parties to be sufficient to determine that there was a meeting of minds and an understanding between the parties. I do not find the tenant's position that the tenancy agreement was voided by the handwritten notes of the landlord to be persuasive or consistent with the conduct of the parties.

The parties used the standard Residential Tenancy Agreement form provided by the Branch completing it by providing the relevant information. I find that a brief note handwritten on a single page does not invalidate an agreement. A plain reading of the note added does not lead me to conclude that this was an attempt by the parties to amend or change a standard term but merely recording some peripheral information.

The tenant conducted themselves during the initial period of the tenancy in a manner consistent with a valid and enforceable tenancy agreement existing. The tenant occupied the rental unit, provided a security deposit of \$1,500.00 and paid monthly rent in the amount of \$3,000.00.

Pursuant to the tenancy agreement I find that the tenant was obligated to pay monthly rent in the amount of \$3,000.00 on the first of each month. Pursuant to section 26(1) of the *Act*, 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. Accordingly, I do not find the tenant's submission that they have no obligation to pay rent due to the conduct of the landlord to have any merit.

I accept the undisputed evidence of the parties that the tenant has not paid any rent since May, 2020. I accept the landlord's submission that as of August 29, 2020 there was a rental arrear of \$12,000.00. Pursuant to The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Tenancy Regulation") a landlord must provide a tenant with a repayment plan for rent that was unpaid during the affected period between March 18, 2020 to August 17, 2020. I find that the landlord complied with the provision of the C19 Tenancy Regulation by issuing a valid Repayment Plan in the standard form for the rental arrear. I find that the copy of the Repayment Plan conforms with the requirements of the C19 Tenancy Regulation. I accept the undisputed testimony of the parties that the Repayment Plan was served in person on the tenant on August 29, 2020.

I accept the undisputed evidence of the parties that the tenant failed to pay monthly rent for the months of September and October, 2020 nor did they make any payments as required under the Repayment Plan. I accept the landlord's submission that as at October 22, 2020 there was an arrear of \$7,200.00 arising from the unpaid rent and missed repayment installment.

The landlord issued a 10 Day Notice dated October 22, 2020. I find the copy of the notice submitted into evidence conforms with the form and content requirements of the Act as it is in the standard form, is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice and the grounds for ending the tenancy.

I accept the evidence of the landlord that they served the 10 Day Notice on the tenant by registered mail sent to the tenant's address. Registered mail is an acceptable method of service as provided in section 88(c) of the *Act*. While the tenant gave multiple conflicting accounts at the hearing disputing that they have been served despite having confirmed service in their own application for dispute resolution, I am satisfied with the landlord's evidence including their sworn testimony and Canada Post tracking receipt that the tenant was served in a manner consistent with the Act. I find that the tenant was sufficiently served with the 10 Day Notice of October 22, 2020 in accordance with section 71(2)(b) of the Act on October 27, 2020, five days after mailing. I note that is also the date that the tenant provides as the date they were served in their own application.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant is deemed served with the 10 Day Notice on October 27, 2020, and filed a notice of dispute application on October 30, 2020 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid any amount of rent from May, 2020 onwards nor have they paid any installment payable pursuant to the Repayment Plan of August 29, 2020. They specifically stated that they did not pay rent in the amount of \$3,000.00 for each of the months of September and October, 2020 and that they did not pay the \$1,200.00 payable on October 1, 2020 under the Repayment Plan.

I accept the evidence of the parties that the rent has not been paid within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application and find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed I issue an Order of Possession enforceable 2 days after service on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that the tenant has failed to pay any rent in accordance with the tenancy agreement since May 2020. I accept the landlord's submission that the total rent arrear including the amount of the affected rent that the tenant failed to pay pursuant to the Repayment Plan is \$24,000.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As I have found that this tenancy is ending, I find it unnecessary to make a finding on the portions of the tenant's application seeking relief pertaining to an ongoing tenancy. Accordingly, I dismiss the portions of the tenant's application seeking repair orders,

authorization to assign or sublet, and to set conditions on the landlord's right to enter the rental unit.

I find that the tenant has provided insufficient evidence in support of the balance of their claims. I find the tenant's submissions regarding the condition of the rental unit to be internally inconsistent, varying moment to moment and have little air of reality. I find that some of the description of the issues are so hyperbolic that it is inconceivable that the tenant would continue to reside in the rental unit if they were true. I find that it strains credulity that a residential property could be in need of repairs and maintenance to the extent that the tenant claims and that there would have been no earlier correspondence, discussion or request for repairs. I find that the tenant has not met their evidentiary burden to demonstrate on a balance of probabilities any basis for their claims. Accordingly, I dismiss these portions of the tenant's application.

As the landlord was successful, they are entitled to recover the filing fee for their application. While the landlord has filed two separate applications, I find the landlord's matters ought reasonably to have been filed as one application. The landlord testified that the matters were filed separately in error. I therefore find it appropriate to issue a monetary award in the amount of \$100.00, the cost of filing a single application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$22,600.00 under the following terms:

Item	Amount
Unpaid Rent May, 2020 – December, 2020	\$24,000.00
Filing Fee	\$100.00
Less Security Deposit	-\$1,500.00
TOTAL	\$22,600.00

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: December 9, 2020

Residential Tenancy Branch