



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking an order cancelling notices to end the tenancy for unpaid rent or utilities; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, each gave affirmed testimony, and the landlord was assisted by an interpreter who was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language, and from the landlord's Native language to the English language to the best of his skill and ability. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

Has the landlord established that the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were given in accordance with the *Residential Tenancy Act* and regulations?

Background and Evidence

The landlord testified that this fixed-term tenancy began on October 22, 2018 and reverted to a month-to-month tenancy after October 21, 2019. The landlord is not certain if the tenant still resides in the rental unit. Rent in the amount of \$3,700.00 is payable on the 1st day of each month, and a pro-rated amount was paid for the first month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,800.00 which is still held in trust by the

landlord and no pet damage deposit was collected. The rental unit is a single family dwelling house, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant only paid \$800.00 for rent in July, 2020 and paid nothing for August, 2020, leaving arrears accumulating of \$6,600.00. The tenant paid full rent for each of the months of September, October, November and December, 2020, however despite serving the tenant with a Repayment Plan, a copy of which has been provided for this hearing, the tenant has not paid the arrears.

On October 14, 2020 the landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated October 14, 2020 and contains an effective date of vacancy of October 27, 2020 for unpaid rent in the amount of \$660.00 that was due on October 10, 2020.

On November 12, 2020 the landlord caused another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenant, which was posted to the door of the rental unit that day, and a copy has been provided for this hearing. It is dated November 12, 2020 and contains an effective date of vacancy of November 26, 2020 for unpaid rent in the amount of \$660.00 that was due on November 10, 2020.

On December 12, 2020 the landlord caused another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenant, which was posted to the door of the rental unit that day, and a copy has been provided for this hearing. It is dated December 12, 2020 and contains an effective date of vacancy of December 27, 2020 for unpaid rent in the amount of \$660.00 that was due on December 10, 2020.

The landlord further testified that the Repayment Plan was served to the tenant on September 4, 2020 by posting it to the door of the rental unit. It shows that the rent for July and August, 2020 equals \$7,400.00 and the tenant paid \$800.00 of that, leaving \$6,600.00 outstanding, and that an additional \$660.00 per month is to be paid commencing October 10, 2020 and ending on July 10, 2021. The landlord has the repayments scheduled on the 10th day of each month, on advice, but did not testify as to who may have provided the advice. The tenant has not paid any amount toward the arrears, and the tenant has not paid any rent after the effective date of the last 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant testified that she still resides in the rental unit.

The tenant further testified that she consulted with the Residential Tenancy Branch and other sources and was told that since the Repayment Plan has a different due date than the tenancy agreement, it is invalid; the dates must be the same.

The tenant reached out to the landlord to work out repayment options, but there were no negotiations. During the last communication with the landlord, the tenant asked about repayment in a message, but the landlord didn't respond. The landlord doesn't appreciate the circumstances, and blames the tenant for things. Although the tenant did not advise the landlord that the Repayment Plan was invalid, the tenant did propose several repayment options.

Analysis

In this case, the tenant does not dispute the amount of rent owed, but disputes the terms of the Repayment Plan.

The COVID-19 (*Residential Tenancy Act and Manufactured Home Park Tenancy Act*) (No. 2) Regulation specifies that: a requirement to give a repayment plan to another person means to give the repayment plan in one of the ways set out in section 89 (1). Section 89 (1) specifies that the methods of service include:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In this case, the landlord testified that the Repayment Plan was posted to the door of the rental unit on September 4, 2020, which is not one of the methods above.

Further, the regulation defines "affected rent," which I find is the rent owed for July and August, 2020, and requires a landlord to make a Repayment Plan in the following terms (underlining added):

Terms of repayment plan

4 (1) The following are terms of each repayment plan:

- (a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
- (b) the payment of the overdue rent must be in equal instalments;
- (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;
- (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

Since the landlord did not serve the Repayment Plan by a method set out in Section 89 (1) above, and did not make a Repayment Plan specifying the same date that rent is payable under the tenancy agreement, I cannot uphold the notices to end the tenancy, and I therefore cancel them.

The landlord submitted that there are 2 options for me to decide: a finding that the Repayment Plan is valid, or if not, and the landlord wants to know why, then a new Repayment Plan can be made in this Decision. The application before me is to cancel the notices given by the landlord, and I leave it to the landlord to serve the tenant with a Repayment Plan that is consistent with the regulations.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent by that amount for a future month, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia (Small Claims Division).

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2020 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 12, 2020 is hereby cancelled.

The 10 Day notice to end Tenancy for Unpaid Rent or Utilities dated December 12, 2020 is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 31, 2020

Residential Tenancy Branch