



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 5, 2020, wherein the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 5, 2020 (the "Notice") an Order restricting the Landlord's right to enter the rental unit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on December 14, 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 Tenant called in on his own behalf. The Landlord's Property Manager, G.L., and the Landlord's Senior Property Manager, G.C., called in on behalf of the Landlord.

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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Residential Tenancy Act* (the "Act") which allows an Arbitrator to

amend an Application for Dispute Resolution. On the Application the Tenant named the property manager, G.L., as Landlord. A review of the tenancy agreement confirms the Landlord is a corporate entity. I therefore Amend the Tenant's Application to correctly name the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord's right to enter the rental unit be restricted?
3. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord's agent, G.C., presented their evidence first.

G.C. stated that this tenancy began December 16, 2019. Monthly rent is \$1,550.00 and the Tenant paid a security deposit of \$775.00.

G.C. confirmed that the Tenant fell behind in his rent payments during the Covid-19 state of emergency. The parties then agreed to a repayment plan whereby the Tenant was obligated to pay an additional \$105.72 per month towards the rent arrears of \$1,268.66 for a total monthly payment of \$1,710.72.

G.C. testified that the Tenant failed to pay the October rent and further failed to pay the amounts towards the repayment plan. In response the Landlord issued the Notice. G.C. testified that the Notice was posted to the rental unit door on October 5, 2020.

G.C. confirmed that the Tenant did not pay the \$1,710.72 within five days of service of the Notice. She stated that the Tenant paid \$650.00 on October 15 and \$800.00 on October 29, 2020 for a total payment of \$1,450.00 for October. She stated that he also failed to pay his November rent. This was confirmed by the Tenant ledger which was provided in evidence.

The Tenant replied to the Landlord's testimony and submissions as follows. The Tenant stated that he fully acknowledged that he did not pay the full October rent, and only made partial payments later in the month.

In terms of his reasoning, the Tenant began to provide statistics regarding the global Covid-19 pandemic. I reminded the Tenant that the moratorium on evictions during the Covid-19 pandemic was lifted as of August 17, 2020 following which tenants could be evicted for nonpayment of rent.

The Tenant then stated that the Landlord's records were incorrect and claimed to have a good relationship with the Landlord's bookkeeper. The Tenant drew my attention to his personal banking records he provided in evidence. These records show transactions from September 9, 2020 to November 28, 2020. The records confirmed the Landlord's evidence that the Tenant made a \$650.00 payment on October 15, 2020 and a \$800.00 payment on October 29, 2020 for a total payment of \$1,450.00 for October 2020.

The Tenant also stated that the Landlord had made accounting errors in the past. Introduced in evidence was an email from the Landlord's representative, S.D., confirming that the Tenant paid the September rent and the August deferral.

The Tenant then asked to provide testimony and evidence as to the Landlord's claim that he did not provide requested income information to ascertain his eligibility for subsidized rent. I informed the Tenant that while a Landlord can end a tenancy pursuant to section 49.1 of the *Act*, in the event a tenant no longer qualifies for housing, the validity of such a notice was not before me in the current hearing. I reminded the Tenant that the only issue before me was the validity of the October 10 Day Notice, and that the Tenant's eligibility for rent subsidy was not at issue before me. I therefore declined to hear the Tenant's testimony and evidence in this regard.

The Tenant then stated that he was not given a fair hearing. The Tenant asked what options were available to set aside my decision. I informed the Tenant of the Review Consideration process provided for in section 79-82 of the *Act*, as well as his right to apply for Judicial Review. The Tenant then confirmed that he was seeking to stall enforcement of any order of Possession.

Analysis

The Landlord issued the 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 posted to the rental unit door on October 5, 2020. Pursuant to section 90 of the *Act*, documents served in this manner are deemed served three days later. Accordingly, I find the Tenant was served as of October 8, 2020. Section 46(4) provides that the Tenant had five days in which to pay the outstanding rent or apply for dispute resolution. The Tenant made his application to dispute the Notice on October 5, 2020.

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.*

[emphasis added in italics]

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*

The Tenant failed to provide any evidence to support a finding that he was legally permitted to withhold rent for any of the above four reasons. While the Tenant may have suffered financial hardship due to the Covid-19 pandemic, this does not meet the narrow circumstances outlined above. In the case before me I find the Tenant had no legal authority to withhold rent.

In all the circumstances, I dismiss the Tenants' claim for an Order canceling the 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 may be filed and enforced in the B.C. Supreme Court. Since the effective date of the Notice has passed, the Order of Possession shall be effective two days after service on the Tenant.

The Tenant, having been unsuccessful in his application, is not entitled to recover the filing fee. Similarly, as the tenancy is ending, his request for an order pursuant to section 29 is no longer applicable.

Conclusion

The Tenant's request for an Order canceling the Notice is dismissed without leave to reapply.

The Landlord is granted an Order of Possession.

As the tenancy is ending, the Tenant's request for an Order restricting the Landlord's right to enter the rental unit is dismissed.

The Tenants' claim for recovery of the filing fee is 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: December 16, 2020

Residential Tenancy Branch