



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDCT, FFT

Introduction

The tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) and a One Month Notice to End Tenancy for Cause (“One Month Notice”), pursuant to sections 46 and 47 of the *Residential Tenancy Act* (“Act”). They have also applied for compensation pursuant to section 67 of the Act. Finally, they have applied for recovery of the application filing fee under section 72 of the Act.

Both parties, along with an interpreter for the landlord, attended the hearing on January 15, 2021, held by teleconference. No issues of service were raised by the parties.

Preliminary Issue: 10 Day Notice

In reviewing this matter, and confirming some information with the tenant, it appeared that there was no 10 Day Notice served by the landlord. It appears that this specific claim in the tenant’s application is inapplicable, and as such it has been removed.

Issues

1. Is the tenant entitled to an order cancelling the One Month Notice?
2. Is the tenant entitled to compensation?
3. Is the tenant entitled to recovery of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on February 1, 2020. The tenancy agreement was originally between the tenant and a previous landlord, who sold the property to the present landlord. The present landlord took possession of the property (a multi-rental unit house) on September 1, 2020. Monthly rent was, and is, \$700.00 per month and there is no security or pet damage deposit. A copy of the written Residential Tenancy Agreement, a copy of which was in evidence, indicates that internet, laundry (one day per week), and parking are included as part of the rent.

The landlord testified that he served the One Month Notice on October 1, 2020 (the tenant disputed this and testified that it was served on October 10, 2020). The landlord testified that the reason he issued the One Month Notice because he wants to live in the rental unit. A copy of the One Month Notice was in evidence, and page two of the One Month Notice indicates that reason for the tenancy being ended was because the tenant did not comply with an order issued under the Act.

The tenant remarked that the landlord has previously given him several reasons why he wants the tenant to move out, such as the landlord wants his nephew to move in, he wants undertake renovations, and so forth.

The tenant testified that his internet access (by way of a wi-fi password) was cut off around October 1, 2020. Internet access has not been restored. He further gave evidence that his laundry was cut off around the same time (though his application indicates September 1, 2020). Finally, he explained that parking, which was included in the rent, was taken over by some rather argumentative and difficult tenants residing upstairs. He now has to park some distance away from the rental unit.

The landlord testified that he never made any agreement with the tenant allowing him to have laundry, internet, or parking as part of the rent. He explained that all of these services were part of an agreement made between the tenant and the previous landlord, and not with him.

The landlord further stated that he was aware that there were tenants in the property when he purchased it, and that the previous landlord was supposed to have issued a *Two Month Notice to End Tenancy For Landlord Use*. Finally, the landlord testified that he did not have a copy of the tenancy agreement between the tenant and the previous landlord.

The tenant testified that the landlord asked to increase the rent, and the landlord denied ever asking or attempting to make a rent increase.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. One Month Notice to End Tenancy for Cause

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The One Month Notice in this dispute gave as its reason, on page two, for ending the tenancy as being made under section 47(1)(l) of the Act, namely, that the tenant “has not complied with an order of the director within 30 days.” There is no evidence on file, no explanation provided on page three of the notice, and no testimony or submissions by the landlord that there is any order made under the Act with which the tenant has not complied. I find that the reason given by the landlord, namely, that he wants to reside in the rental unit, to be wholly inconsistent with the stated reason on page two of the One Month Notice.

If the landlord intends, in good faith, to occupy the rental unit he is required to issue a Two Month Notice to End Tenancy for Landlord Use and do so in compliance with section 49 of the Act. This was not done.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which he issued the One Month Notice.

Accordingly, I order that the One Month Notice is hereby cancelled. It is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

2. Compensation for Loss of Internet and Laundry

As per the tenancy agreement, the \$700.00 monthly rent paid by the tenant includes internet, and it includes the use of laundry one day per week. It also includes the provision of at least one parking spot for the tenant.

What the landlord appears to not understand is that the tenancy agreement, including all terms of conditions of that tenancy agreement, that existed between the tenant and the previous landlord *continue to exist* between the tenant and the current landlord. The tenant is required to continue paying rent of \$700.00, and the landlord is required to continue providing each and every service and facility that are included in that tenancy agreement and are included with the rent. The landlord does not have the legal right to simply cut off and restrict facilities and services that are contained in the tenancy agreement. Nor does it matter that the landlord did not “agree” to the terms of the tenancy agreement: the tenancy agreement that was in force at the time the landlord took possession of the property and the rental unit continue unchanged.

The landlord testified that he never received a copy of the tenancy agreement. While I find this rather difficult to believe, I include an excerpt from page 2 of the tenancy agreement below for the landlord's edification:

3. RENT (please fill in the information in the spaces provided)

a) **Payment of Rent:**
 The tenant will pay the rent of \$ 700 each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) 1st day of each (check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.
 The tenant must pay the rent on time. If the rent is late, the landlord may issue a *Notice to End Tenancy for Unpaid Rent* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Natural gas	<input checked="" type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Sewage disposal	<input checked="" type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Parking for <u>1</u> vehicles
<input checked="" type="checkbox"/> Electricity	<input checked="" type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: <input type="text"/>
<input checked="" type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input checked="" type="checkbox"/> Window coverings	<input type="checkbox"/> Other: <input type="text"/>
<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input checked="" type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>
<input checked="" type="checkbox"/> Additional information: <u>1 day a week (Sunday) for laundry</u>				

#RTB-1 (2019/11)

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The tenant seeks \$800.00 in compensation for loss of internet and laundry. He testified that the cheapest internet service would be approximately \$100.00 per month. Internet has been discontinued since October 1, which results in a loss of services equivalent to \$350.00 as of today's date. He testified that he has had to use a laundromat, which costs \$64.00 per month (at \$8.00/load x 8 loads/month). The tenant's application notes that utilities were discontinued on September 1, 2020. \$64.00 per month times 4.5 months (bringing the time for calculating the loss to today's date) is \$288.00. A total of \$638.00 is therefore calculated as being the correct amount based on the evidence before me. No claim was made on the loss of the parking, so I make no award on that.

I note that in evidence is a copy of the landlord's Notice Termination or Restricting a Service or Facility (#RTB-24). However, the service or facility being terminated or restricted is listed as "one bedroom basement." A rental unit is not considered a service or a facility under the Act, rather, an example of a service or a facility is internet, parking, and laundry. Thus, I find this notice to be of no force or effect.

Section 27 of the Act states the following:

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

In this case, the landlord terminated the internet and laundry in breach of section 27(1) of the Act. The tenant suffered a loss as a result, and the amount claimed is reasonable based on the value and cost of the loss of internet and laundry facilities.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for \$638.00 in compensation.

3. Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful in his application, I grant his claim for reimbursement of the \$100.00 filing fee, which is added to the award.

Summary of Award and Monetary Order

I grant the tenant a total monetary award of \$738.00. A monetary order is issued, in conjunction with this Decision, to the tenant. The tenant must serve the monetary order on the landlord in order for the monetary order to be enforceable.

Finally, it would be prudent for the landlord to forthwith reinstate internet, laundry, and parking, in compliance with his legal obligations under the tenancy agreement. Failure to do so may result in the tenant bringing a further application seeking additional compensation, an order for a reduction in rent, or, for an order of compliance.

Conclusion

I grant the tenant's application.

The One Month Notice to End Tenancy for Cause is cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I grant the tenant a monetary order of \$738.00, which must be served on the landlord. If the landlord fails to pay the tenant the amount owed within 15 days of receiving this Decision, the tenant may enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 15, 2021

Residential Tenancy Branch