



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1079450 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 24, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 21, 2020 (the "Notice").
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.
- To recover the filing fee.

The Tenant did not appear at the hearing. The Agent for the Landlord did appear at the hearing. The Agent confirmed the Landlord is seeking an Order of Possession based on the Notice.

The Agent provided the correct name of the Landlord which is reflected in the style of cause.

I waited 10 minutes at the outset of the hearing to allow the Tenant to participate in this hearing scheduled for 11:00 a.m. The Tenant did not call into the hearing. I proceeded with the hearing in the absence of the Tenant. The hearing proceeded for 28 minutes.

I explained the hearing process to the Agent. The Agent provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent testified that the Tenant only served one page of the Notice of Dispute Resolution on the Landlord and that the Agent obtained the hearing package from the RTB on February 08, 2021. The Agent testified that the Landlord was

not served with the Tenant's evidence. The Agent agreed to me proceeding and considering the Notice despite the lack of service.

The Agent testified that the Landlord's evidence was served on the Tenant in person February 03, 2021.

Pursuant to rule 3.14 of the Rules of Procedure (the "Rules"), the Tenant was required to serve their evidence on the Landlord. I am satisfied based on the undisputed testimony of the Agent that the Tenant did not serve their evidence on the Landlord. Given this, I have excluded the evidence, other than the Notice, pursuant to rule 3.17 of the Rules as I find it would be unfair to consider evidence the Landlord has not seen and could not respond to at the hearing.

I also note rule 7.4 of the Rules which states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenant did not appear at the hearing to present their evidence.

I am satisfied based on the undisputed testimony of the Agent that the Landlord's evidence was served on the Tenant in accordance with section 88(a) of the *Residential Tenancy Act* (the "Act") and rule 3.15 of the Rules. Therefore, the Landlord's evidence is admissible, and I have considered it.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started September 15, 2019. Rent is \$2,200.00 per month due on the first day of each month. The tenancy agreement does not indicate that gas, water or sewer are included in the rent. The

tenancy agreement states, “the tenant is responsible for all utilities (city bill, water, electricity, gas, internet etc.)”

The Notice was submitted. It states that the Tenant failed to pay \$2,421.93 in utilities due November 21, 2020.

The Agent testified that the Notice was left with an adult who resides with the Tenant at the rental unit on November 22, 2020. The Agent referred to a photo of this in evidence.

The Agent testified that the Tenant owed \$2,421.93 in utilities when the Notice was issued and that this was for gas, water and sewer.

The Agent testified that the Tenant was given a written demand to pay the utilities September 14th, September 17th, October 01st, November 21st and November 24th of 2020.

The Agent testified that the Tenant did not pay any of the outstanding utilities after the Notice was issued.

The Agent testified that a repayment plan was not issued to the Tenant in relation to the utilities.

The Agent sought an Order of Possession effective at the end of February.

The Landlord submitted the following evidence that I have relied on:

- An excel spreadsheet outlining gas bills and payments which indicates that the owner paid \$639.93 of the gas bills for December of 2019 and February of 2020.
- An email dated November 24, 2020 from the Landlord to the Tenant indicating that they are seeking \$639.93 for the gas bills paid by the owner.
- A letter from the Landlord to the Tenant about the Application and the \$639.93 owing for the gas bills.

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant failed to attend the hearing and provide a basis, or evidence, for the Application. In the absence of evidence from the Tenant, the Application is dismissed without leave to re-apply.

Section 46 of the *Act* states:

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]...

(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...

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation (the "*Regulation*") applies to rent and utilities which became due between March and August of 2020 and requires the landlord to issue a repayment plan for these. I have not considered the water and sewer bill because it covered the entire year of 2020 and therefore covered utilities for March to August of 2020 and because a repayment plan was not issued for utilities. I have only considered the validity of the Notice based on the \$639.93 owed for gas charges which became due outside of the period from March to August of 2020.

I am satisfied based on the written tenancy agreement that the Tenant was required to pay for gas pursuant to the tenancy agreement.

I am satisfied based on the undisputed testimony of the Agent, excel spreadsheet, email dated November 24, 2020 and letter from the Landlord to the Tenant in evidence that the Tenant owed \$639.93 for gas charges when the Notice was issued.

I am satisfied based on the undisputed testimony of the Agent that the Tenant was given a written demand for utilities, including the \$639.93 for gas charges, on September 14th, September 17th and October 01st of 2020, more than 30 days before the Notice was issued.

I am satisfied based on the undisputed testimony of the Agent that the Tenant had not paid the \$639.93 for the gas charges when the Notice was issued and therefore I am satisfied the Landlord was entitled to issue the Notice on this basis pursuant to section 46(6) of the *Act*.

I am satisfied based on the undisputed testimony of the Agent and photo that the Notice was served on the Tenant in accordance with section 88(e) of the *Act* on November 22, 2020.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the Notice included the amount owed for water and sewer; however, this does not invalidate the Notice. The Notice included the \$639.93 owed for gas charges and I am satisfied the Landlord had grounds to issue the Notice for this amount.

The Tenant had five days from November 22, 2020 to pay the outstanding amount of \$639.93 or to dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the undisputed testimony of the Agent that the Tenant did not pay the outstanding gas charges in the amount of \$639.93 after the Notice was issued.

The Tenant disputed the Notice November 24, 2020; however, the Tenant did not appear at the hearing to provide a basis for the dispute and the dispute has been dismissed without leave to re-apply.

I have dismissed the Tenant's dispute of the Notice and found that the Notice complies with section 52 of the *Act*. Further, I am satisfied the Landlord had grounds to issue the Notice and I uphold the Notice. Therefore, pursuant to section 55 of the *Act*, the Landlord is issued an Order of Possession for the rental unit effective at 1:00 p.m. on February 28, 2020.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2020 pursuant to section 55 of the *Act*. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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 *Act*.

Dated: February 19, 2021

Residential Tenancy Branch