



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR CNL OLC FF
Landlord: OPR MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants applied for an order to:

- Cancel the Landlord’s Notice to End Tenancy for Landlord’s Use of Property (the 2-Month Notice);
- Cancel the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice); and,
- An order for the Landlord to comply with the Act.

The Landlord cross applied for:

- an order of possession based off the 10 Day Notice;
- a monetary order for unpaid rent; and,
- Permission to retain the security deposit to offset what is owed.

The Landlord attended the hearing with her father, and an agent (collectively referred to as the Landlord). The Tenant also attended the hearing. All parties provided testimony. The Landlord confirmed receipt of the Tenant’s 2 different application and Notice of Hearing packages. I find the two packages were sufficiently served for the purposes of this Act. However, the Tenant stated he did not serve his evidence to the Landlord, and only uploaded it to the Tenancy Branch website. As stated in the hearing, the Tenant was required to serve his evidence to the Landlord in order for it to be admissible. Given this was not done, I decline to consider any of the Tenant’s documentary evidence.

The Tenant confirmed that he got the Landlord's Notice of Hearing, evidence, and application package at the end of December 2020. The Tenant noted that it was missing pages 2 and 4 of the "respondent instructions" document, and he raised this issue with the Landlord. The Landlord subsequently emailed the Tenant the two missing pages on February 3, 2021. The Tenant acknowledged getting this email, and all documentation. Although email service is not an approved method of service under the Act, section 71(2) of the Act allows me to find that a document has been sufficiently served for the purposes of the Act. Given the Tenant received the missing pages around 3 weeks before the hearing, I find the Tenant has been sufficiently served with the Landlord's application and evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending, and whether or not money is owed due to the Notices issued. As a result, I exercised my discretion to dismiss, with leave to reapply, the following ground on the Tenant's application:

- An order for the landlord to comply with the Act

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice, or the 2 Month Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

- Is the landlord entitled to a monetary order for unpaid rent or to claim against the security deposit for money owed?

Background and Evidence

The parties both agree that the Tenant is currently under a fixed term tenancy agreement, expiring at the end of December 2020. Monthly rent is set at \$1,960.00 and is due on the first of the month. The Landlord holds a security deposit in the amount of \$925.00.

The Tenant applied to cancel two 10 Day Notices, one issued on December 1, 2020, and one issued on December 3, 2020. The Tenant also applied to cancel a 2 Month Notice he received on November 30, 2020. The effective date of the 2 Month Notice is February 28, 2021.

The Landlord acknowledged that the 10 Day Notice he issued on December 1, 2020, was premature, since December rent was not overdue until December 2, 2020. The parties both agreed to cancel this Notice, and focus on the 10 Day Notice, received by the Tenant on December 3, 2020. The 10 Day Notice from December 3, 2020, indicates that \$1,960.00 in rent was overdue because the Tenant failed to pay any rent for December. The effective date of this Notice was December 14, 2020.

The Tenant acknowledges that he did not pay any rent for December. The Tenant acknowledged that he has not made any rent payments since November, despite remaining in the rental unit. The Tenant stated that due to the disruptions associated with a renovation earlier in the fall of 2020, he believed it was reasonable to ask for free rent for the month of December. The Tenant sent the Landlord a letter, outlining this request, in November, but the Landlord did not agree to reduce rent. The Tenant never filed an application for dispute resolution asking for a rent reduction.

The Tenant also stated that the 2 Month Notice should be cancelled because the Landlord indicated that they required the rental unit so that the Landlord's father and mother could move in. The Tenant pointed out that the Landlord's intentions are questionable regarding this Notice because they also had the house listed for sale in September- November 2020. The Tenant also noted that the Landlord's father lives a couple blocks away in a nicer house, so it is unclear why he would want to move in here.

The Landlord explained that she is currently living nearby in her parents house, along with her kids. The Landlord stated that she needs more space, and as a result, she is going to stay living in her parents house, and they are going to move into this rental house. The Landlord stated that it was for sale, but it was taken off the market before the 2 Month Notice was issued.

The Landlord has stated that they are seeking \$5,880.00 in unpaid rent for December 2020, January 2021, and February 2021 (3 x 1,960.00). The Tenant feels he should at least be entitled to a free month's rent due to receiving the 2 Month Notice.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notices are valid and that she is owed the money she is seeking for rent. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The parties both agree that monthly rent is due on the first of the month, in the amount of \$1,960.00. Although the Tenant feels it is fair to reduce December 2020 rent because of the hassle he endured while the Landlord was renovating the rental unit, I find the Tenant should have filed an application for dispute resolution rather than unilaterally decide what rent reduction he is entitled to. The Tenant could have applied for monetary compensation but in the meantime, he would have been required to continue paying rent, in full. I find there is insufficient evidence the Tenant had any legal basis to withhold December 2020 rent in the manner he did. I find rent was due on the first of the month, as it usually was.

The Tenant confirmed receiving the 10 Day Notice on December 3, 2020. The Tenant had 5 days to pay rent in full or file an application for dispute resolution and present a valid reason why he withheld the rent. The Tenant did not pay rent in full, nor did he present any valid reason why he was legally entitled to withhold rent. As such, I hereby dismiss the Tenant's application to cancel the 10 Day Notice, he received on December 3, 2020.

As the Tenant's Application to cancel the 10 Day Notice from December 3, 2020, is dismissed, I must now consider if the Landlord is entitled to an Order of Possession based off this Notice, and pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the 10 Day Notice issued by the Landlord on December 3, 2020, meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

I note the effective date of the 10 Day Notice from December 3, 2020, was December 14, 2020. Given the Tenant did not have a legal basis to withhold rent, I find the tenancy ended as of the effective date of that Notice, and the Tenant is currently overholding the rental unit and is required to pay rent until he vacates. With respect to the 2 Month Notice, issued by the Landlord and received by the Tenant on November 30, 2020, I find this Notice is of no force or effect, since the tenancy ended as of the effective date of the December 10 Day Notice. Given the tenancy ended prior to the effective date of the 2 Month Notice, I find no compensation is required, as the 2 Month Notice that was issued no longer has a legally valid effective date or basis.

Further, given the tenancy is ending by way of the 10 Day Notice from December 3, 2020, it is not necessary to consider the merits of the 2 Month Notice. As stated above, the tenancy ended before the 2 Month Notice could take effect.

I find there is sufficient evidence to demonstrate that the Tenant owes, and has failed to pay rent for December 2020, January, and February 2021. I find the Landlord is entitled to a monetary order for this amount, \$5,880.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and

used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$5,880.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$925.00)
TOTAL:	\$5,055.00

Conclusion

The Tenant's application to cancel the Notices is dismissed, in full, without leave to reapply.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,055.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: February 23, 2021

Residential Tenancy Branch