



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 487559 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR-MT, MNDC, RR
For the landlord: OPR, MNR, FFL

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlords;
- an order extending the time to file an application disputing the Notice issued by the landlord;
- compensation for a monetary loss or other money owed; and
- a reduction in monthly rent.

The landlords applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord's agent (landlord), representing the limited corporation, and after five minutes, the tenant, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

Prior to the tenant calling into the hearing, the landlord confirmed receiving the tenant's application for dispute resolution. The landlord submitted that he served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service on February 3, 2021, the same day the Notice of Hearing was provided to him.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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 Issue –

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice. The balance of the tenant's application will be addressed within this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation from the tenant, and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence showed this tenancy began on July 1, 2015, for a monthly rent of \$1,000 and a security deposit of \$500 being paid by the tenant to the landlord. This landlord

was not the original landlord. The landlord submitted that the current monthly rent was \$1,066. Filed into evidence is a copy of the written tenancy agreement.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord confirmed that on December 14, 2020, the tenant was served the Notice, by personal delivery and registered mail, listing unpaid rent of \$1,302 owed as of December 1, 2020. The effective vacancy date listed on the Notice was December 27, 2020. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and that he now owes total unpaid monthly rent of \$4,500 through March 2021.

The landlord's monetary claim in their application was \$2,368, which was the unpaid monthly rent through January 2020.

Tenant's response-

In response, the tenant confirmed that he has not paid the rent listed on the Notice or any further monthly rent payments.

The tenant submitted that he was owed money from the previous landlord for work done around the rental unit.

The tenant provided no documentary evidence of this submission.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

Order of possession of the rental unit –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and

tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, he confirmed the landlord's evidence that he had not paid the monthly rent listed on the Notice or any monthly rent since that date. I cannot consider the personal circumstances of the tenant, only his obligations under the law.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an **order of possession** for the rental unit **effective 2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenant.

Monetary order –

I also find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month since.

I therefore find the landlord is entitled to increase their monetary claim to account for further unpaid monthly rent through the date of the hearing. I find the landlord has established a monetary award of **\$4,600**, comprised of unpaid rent of **\$4,500** through March 2021 and the **\$100** filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$4,600**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

Tenant's application-

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the Notice, **without leave to reapply**.

I also dismiss without leave to reapply the portion of the tenant's application for a reduction in monthly rent, as this is a matter for an ongoing tenancy.

I also dismiss with leave to reapply the portion of the tenant's application for monetary compensation, as this matter was severed from the tenant's application.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenant's application seeking cancellation of the Notice and a reduction in monthly rent is dismissed without leave to reapply as I have granted the landlord's application in full.

The portion of the tenant's application for monetary compensation is dismissed, with 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: March 22, 2021