



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wentworth Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, OLC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a reduction in monthly rent; and
- an order requiring the landlord to comply with the Act, regulations or tenancy agreement.

The tenant and the landlord's agent/property manager (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

The landlord confirmed receiving the tenant's application for dispute resolution and evidence prior to the hearing. The landlord also confirmed not providing evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the 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 and Procedural Matters-

The landlord requested that the landlord's name as listed on the tenant's application be changed to reflect the landlord's name on the shelter documents submitted by the tenant.

I have reviewed that document and find it appropriate to remove the name of the landlord listed on the tenant's application to change the landlord's name. That name is now reflected on the style of cause page of this Decision.

Additionally, 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 10 Day 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 10 Day Notice. The balance of the tenant's application will be addressed later in this Decision.

I informed the parties of this decision at the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and/or the 1 Month Notice?

Background and Evidence

There was no written tenancy agreement submitted for this hearing. The tenant said that this tenancy began on October 1, 2020, monthly rent is \$600, due on the first day of the month, and that he paid a security deposit of \$300 to the landlord.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord is to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The tenant and the landlord agreed that the tenant was served with the 10 Day Notice on January 12, 2021, by attaching it to the tenant's door. The 10 Day Notice listed unpaid rent of \$600 owed as of January 1, 2021. The effective move-out date listed was January 25, 2021. The tenant confirmed receiving the Notice on January 12, 2021.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and now owes rent for the months of January, February, March and April, 2021, of \$600 each.

Tenant's response-

In response, the tenant confirmed he put a stop-payment on the January 2021 rent payment, as he wanted to get the landlord's attention. The tenant explained that the landlord has refused to address his complaints about noise from two other tenants, and has not given the tenant his right to quiet enjoyment.

The tenant said that the additional months' rent payments are sitting in his bank account and the landlord has refused to withdraw the monthly rent.

The landlord denied the tenant's statement, saying that they have tried to withdraw the monthly rent payments, but they came back due to non-sufficient funds.

Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon

receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was issued. Further, I find that he did not pay the rent owed to the landlord within five days of receiving the Notice.

I therefore find the landlord submitted sufficient evidence to support the Notice and it must be upheld.

I therefore dismiss the tenant's application seeking cancellation of the 10 Day Notice.

I order the tenancy ended on the effective date of the Notice, or January 25, 2021.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

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

Conclusion

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply, as I have upheld the 10 Day Notice, as I find it was valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

As to the tenant's request for a reduction in ongoing monthly rent payments and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, these are issues dealing with an ongoing tenancy. As this tenancy is ending, I dismiss these portions of the tenant's application, 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: April 15, 2021

Residential Tenancy Branch