



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eco Vision Developers Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNDCT MNRT RP RR OLC OPU MNRL-S FFL

Introduction

The tenant applied for various relief under the *Residential Tenancy Act* ("Act"). For reasons that will be explained below, I shall only deal with the tenant's application for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46 of the Act.

The landlord applied for an order of possession based on the Notice, for a monetary order for unpaid rent, and for recovery of the application filing, pursuant to sections 46 and 55, section 67, and section 72, respectively, of the Act.

On April 19, 2021, the tenant, a representative for the landlord, and legal counsel for the landlord attended the teleconference hearing. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue. While the reasons for the tenant allegedly not paying the rent are linked, however tenuously, to their reasons for not paying the rent, they are not substantially linked in the manner that they may be heard in one application. As explained to the parties, I would only be dealing with the tenant's dispute of the Notice. The remaining claims made by the tenant are dismissed with leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below. This decision addresses both applications.

The tenancy began on November 1, 2018. Monthly rent is \$1,800.00, and it is due on the first day of the month. The tenant paid a security deposit of \$900.00 and a pet damage deposit of \$900.00. The landlord currently holds both deposits in trust pending the outcome of its application. There is a copy of written residential tenancy agreement in evidence.

On January 23, 2021, the landlord served a copy of the Notice on the tenant both in-person and by registered mail. The Notice, a copy of which was in evidence, indicated an amount of rent that was due on January 1, 2021 and unpaid utilities that were also due. Landlord's counsel submitted that the total amount should have been corrected to \$3,000.00. The tenant did not pay rent due December 1, 2020 and they did not pay that was due on January 1, 2021. However, a partial payment (of sorts) in the amount of \$600.00 was made toward the \$3,600.00 indicated on page two of the Notice. Thus, the amount owed as of January 23, 2021 was, and should have been, \$3,000.00.

In respect of the unpaid utilities in the amount of \$4,800.00, which are also indicated on page two of the Notice, counsel explained that it turns out no written demand letter was ever given. This, as she correctly pointed out, is required to be given by a landlord before a notice to end tenancy may be issued. For these reasons, I explained that I would strike out that portion of the Notice and find it to be void.

Landlord's counsel submitted that the tenant is in arrears in the amount of \$8,400.00. The tenant has not, according to counsel, paid any rent since December 1, 2020.

The tenant testified about various problems with the property, and of various problems with the landlord's representative ("Chris"). They remarked that this dispute, "this is all nonsense." The tenant testified that they always paid their rent and that there were no problems until December 2020. The tenant asked the landlord's representative to deal with mice, and that problem did not go away. Rather, it got worse, and now the tenant has more significant problems with rats. Other issues were also mentioned, such as sparking electrical systems and a broken stove.

The tenant testified that she would be "happy to give him rent if he provided the services [listed] in the tenancy agreement." She reiterated that "I'm not paying him because [of the several issues]."

Analysis

A. Dispute of Notice and Landlord's Application for Order of Possession

Section 26 of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(1) of the Act states that

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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the landlord's undisputed evidence persuades me to find that the tenant did not and has not paid rent as required by the tenancy agreement since December 1, 2020. Further, having reviewed the Notice, I find that the Notice complies with section 52 of the Act.

The tenant spoke of several issues (such as mice, rats, an inoperable stove, and so forth), but none of these, with respect, gave rise to a legal right under the Act to deduct from the rent. Under the Act there are only four instances where a tenant has a right to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

While the tenant may have paid for repairs or other costs related to the rental unit, I am not satisfied on the evidence before me that the tenant has somehow accrued \$8,400.00 as the amount that they are entitled to deduct from the rent. Finally, whether a landlord provides or does not provide a service or facility under a tenancy agreement and under the Act does not grant a tenant the right to not pay rent.

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 met the onus of proving that the tenant did not pay rent in accordance with the tenancy agreement and the Act and I therefore uphold the Notice. Thus, the tenant's application to cancel the Notice is dismissed, without leave to reapply.

Pursuant to section 55(1) of the Act I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenant. The order of possession will go into effect two (2) days after it is served on the tenant, and the tenancy is now ordered ended.

B. Landlord's Claim for Compensation for Unpaid Rent

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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 met the onus of proving their claim for \$8,400.00 in unpaid rent.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee. The landlord is awarded a total of \$8,500.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenant's security and pet damage deposits of \$1,800.00 in partial satisfaction of the above-noted award.

The balance of the award, \$6,700.00, shall be issued to the landlord by way of a monetary order. This monetary order is issued, with this Decision, to the landlord.

On a final note: while I understand that a third party ("Tri City Mortgage Fund Ltd.") has obtained an order against the landlord (and others) from the Supreme Court of British Columbia as part of foreclosure proceedings, it should be noted that the legal landlord remains that of the landlord as listed in this dispute. Under the terms of the tenancy agreement, the tenant is, and was, required to pay rent to the landlord as named in the tenancy agreement. The third party has not applied for dispute resolution claiming against the tenant, nor have they applied jointly with the landlord in any application for dispute resolution claiming against the tenant for compensation. As such, pursuant to section 67 the Act, I order that the tenant pay \$6,700.00 to the landlord, as named in the tenancy agreement, and I issue a monetary order to that effect.

Conclusion

I HEREBY:

1. dismiss the tenant's application, without leave to reapply;
2. grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days after the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,
3. grant the landlord a monetary order in the amount of \$6,700.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord 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: April 19, 2021

Residential Tenancy Branch