



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, MNDCT, RP, OLC, LRE, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The tenant was assisted by advocate AL. The landlords were represented by agent WL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing and that when one person is speaking, the other can not interrupt.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the periodic tenancy started on May 13, 2017. Monthly rent of \$1,383.00 is due on the first day of the month. At the outset of the tenancy a security deposit of \$1,350.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence.

Both parties agreed the Notice was served in person on January 04, 2021 and the tenant continues to occupy the rental unit. This application was filed on January 07, 2021.

A copy of the Notice dated January 04, 2020 was provided. The effective date is January 13, 2021. The Notice does not indicate the amount of rent arrears.

Both parties agreed the tenant did not pay rent for January, February, March and April 2021. The tenant is aware the Notice was issued because he did not pay January 01, 2021 rent and he stated he did not pay rent because the landlords are having guests during the pandemic. The landlords live in the main house and the tenant occupies the basement rental unit.

Analysis

Based on both parties undisputed testimony, I find the tenant received the Notice on January 04, 2021 and disputed it on January 07, 2021, within the timeframe of section 46(4)(b) of the Act.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept both parties uncontroverted testimony that the tenant did not pay any rent for January, February, March and April 2021 rent.

I find the form and content of the Notice is valid pursuant to section 52 (a), (b) and (c) and (e) of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice and is in the approved form.

The 10 Day Notice to End Tenancy for Unpaid Rent does not state the amount of rent arrears. Section 68(1) of the Act allows the arbitrator to amend the Notice if:

- If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that
 - (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.

Based on the tenant's testimony, I am satisfied the tenant was aware that when he received the Notice he was in rent arrears in the amount of \$1,383.00 due on January 01, 2021 and it is reasonable to amend the Notice. As such, I amend the January 04, 2020 Notice to state the tenant failed to pay rent in the amount of \$1,383.00 due on January 01, 2021. The Notice's correct date is January 04, 2021, the date it was served.

Pursuant to section 46 (1) of the Act, 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. Pursuant to section 53(2) of the Act, the effective date is automatically corrected to January 14, 2021.

The landlords are entitled to an order of possession effective two days after service on the tenant, per section 55(1)(b) of the Act.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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 08, 2021

Residential Tenancy Branch