



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, OLC, RP, PSF, LRE
For the landlord: OPR-DR, OPRM-DR, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on February 9, 2021 seeking the following:

- a) an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlord on February 4, 2021;
- b) the landlord’s compliance with the legislation and/or the tenancy agreement;
- c) repairs to the rental unit where requested of the landlord but not completed;
- d) provision of services/facilities required by the legislation and/or tenancy agreement;
- e) suspension or set conditions on the landlord’s right to enter the rental unit.

The landlord filed an Application for Dispute Resolution (the “landlord’s Application”) by Direct Request on February 19, 2021. They seek an order of possession for the rental unit, to recover the money for unpaid rent and the Application filing fee. The matter proceeded by way of a participatory hearing because the landlord’s Direct Request application cannot be considered by that method where there is a cross-application by the tenant in place.

The tenant stated they delivered notice of this dispute hearing to the landlord in person to an employee of the landlord’s property management company by the delivery deadline. This was on February 21, 2021, within three days of the documentation being made available to them by the Residential Tenancy Branch. The landlord confirmed they received the notice and the tenant’s prepared evidence.

The landlord provided their evidence for their Application to the tenant via registered mail. They provided proof of this in the form of a registered mail receipt and tracking number information. In the hearing, the tenant confirmed they received this package.

On the basis of confirmed receipt of either party's evidence, the hearing proceeded at the scheduled date and time.

Preliminary Matter

At the outset of the hearing, the tenant Applicant advised they wished to withdraw those portions of their Application that focus on issues other than the possible end of tenancy. I consider these pieces b) through e) listed above withdrawn; the focus of the hearing was on the issues listed below.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the 10-Day Notice pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in their Application, is the landlord entitled to an order of possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the residential tenancy agreement as part of the evidence they prepared for this hearing. With my summary of the terms of the agreement in the hearing, both parties agreed on the content. The tenant and a prior property agent signed the agreement on February 25, 2018. The tenancy started on March 1, 2018, and the indication on the agreement is that the term of the agreement was for a fixed term ending on February 28, 2019. After renewal agreements, the monthly rent became \$1,555.39 per month, payable on the first of each month. The tenant paid the security deposit of \$729.50 at the start of the tenancy.

The landlord provided a copy of the 10-Day Notice, issued and signed on February 2, 2021. This gave the final move-out date of February 15, 2021. The landlord served this document by attaching it to the door of the rental unit. A 'Proof of Service' signed the same day bears a witness statement attesting to the posting of the 10 Day Notice on the door.

In the hearing, the tenant confirmed receipt of the same. The tenant's Application provides the date they received the 10-Day Notice as February 4; however, in the hearing the tenant stated this was on February 5. They provided that they had not left their rental unit from February 2nd – February 5th, and when they did so they discovered the document affixed to the door of the rental unit.

The landlord issued the 10-Day Notice with the indication that the current month's rent was not paid on time. This is the amount of the full month's rent, \$1,555.39 due on February 1, 2021, as indicated on page 2 of the document.

The landlord also provided a detailed ledger for this individual tenancy. At the time of their Application and issuance of the 10-Day Notice, the ledger shows the balance owing of the full monthly rent amount at \$1,555.39. The ledger shows the amount received for February at \$757.99 paid on January 29 – this is approximately one-half the monthly rent paid for by a government ministry.

Prior to the hearing, the landlord provided additional evidence to this office and the tenant. The landlord provide proof of this recent service to the tenant of this documentation with an image of the containing envelope placed in the door of the rental unit.

The updated ledger transactions for the subsequent months. For each of March and April, the landlord received the partial rent amount \$757.99. For each of these transactions, the landlord issued a receipt for that amount and each of them have the notation: "for use and occupancy only of the suite . . . does not reinstate tenancy." In the hearing, the landlord provided that the updated ledger shows the full amount owing of \$3,400.19. As of the May 14, 2021 hearing, the landlord amended this amount to reflect May rent owing, to \$4,247.59.

The tenant accepted that there were rent amounts left owing. The tenant responded to the landlord's submissions by raising the following:

- they presented that they hoped for some relief, due to the hardship in which they found themselves in 2020
- this entailed loss of their job and loss of assistance with rent from the roommate that was present in the unit at the start of the tenancy

- they have lived in the unit for 3 years total, with no rent payment issues before, and no complaints from staff about their individual rental unit
- they are having their issues with income from different levels of government rectified
- they have new employment secured, and with vaccination imminent, can look forward to accepting a new roommate in the unit
- as part of repayment, they are willing to assist with labour on the property, landscaping and repainting e.g. – this was a proposal along with repayment they put directly to the landlord in the hearing.

After separate deliberation, the two agents representing the landlord in the hearing returned to state that they were maintaining their request for an Order of Possession which means ending the tenancy.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if the rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the 10-Day Notice, or dispute it by filing an Application for Dispute Resolution.

I accept the evidence before me that the tenants failed to pay the February rent owed in full by February 8, 2021 within three days of deemed service granted under s. 90(c) of the *Act*. For that reason, I find the reason the landlords served the 10-Day Notice is valid. The tenant is not successful in seeking to cancel this 10-Day Notice; therefore, I dismiss the tenant's application.

The *Act* s. 55 provides that I must grant the landlord an order of possession where the tenant's Application is dismissed, *and* the 10-Day Notice complies with the s. 52 provisions of form and content. The rent amount indicated -- \$1,555.39 -- is the landlord's indication they did not receive the full amount of rent for February 2021. On my review of the document, I find the 10-Day Notice issued by the landlord on February 2, 2021 contains each of the necessary elements set out in s. 52.

I find the landlord had the authority to issue the Notice under section 46 of the *Act*; therefore, I grant the landlord's request for an Order of Possession under section 55 of the *Act*.

Based on the landlord's testimony regarding their amended claim amount, I find the claim for the total rent amount owing is valid, and the landlord shall receive compensation for that amount. This is \$4,247.59 as indicated in the landlord's ledger. I make this award by application of s. 55(1.1) of the *Act*, as well as the basic provision of compensation set out in s. 67.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the landlords was successful in their claim, I find they are entitled to recover the filing fee from the tenant.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$4,347.59 for unpaid rent and a recovery of the filing fee for this hearing application. I provide the landlord with this Order in the above terms and they must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, the landlord may file this Order of Possession with the Supreme Court of British Columbia where it will 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 s. 9.1(1) of the *Act*.

Dated: May 19, 2021

Residential Tenancy Branch