



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant LH's application: CNR, CNL, OLC
Tenant HC's application: CNR, OLC, MNDC, LRE, PSF, AAT MNR
Landlord application: OPR-DR, OPRM-DR, MNDC, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with multiple applications set for dispute resolution under the Residential Tenancy Act (Act).

On February 20, 2021, tenant LH filed an application, naming as landlord, TSH, for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (One Month Notice) issued by the landlord; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

On April 7, 2021, Tenant HC filed an application, naming as respondents/landlords, TSH and H-T-N for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by landlord H-T-N;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- compensation for a monetary loss or other money owed;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;

- an order requiring the landlord to allow access to the rental unit for the tenant and his guests;
- reimbursement of the cost of making emergency repairs.

On February 20, 2021, landlord TSH filed an application naming as respondents/tenants LH and HC, for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

Although the two tenants had separate tenancies and they each received their separate 10 Day Notices, their files were administratively classified as a repeated application and set to be heard together. This is incorrect, as repeated applications involve the same tenant and the same tenancy.

Additionally, although the landlord served the separate tenants different 10 Day Notices, they filed their single application naming the separate tenants, instead of two separate applications for each separate tenant.

The landlord's single application for separate tenancies was allowed to be filed and was administratively joined as a cross application for the separate tenancies. All the applications were set to be heard in a single hearing.

Although the files were from two separate tenants and separate tenancies and the landlord incorrectly filed what should have been two separate applications against two separate tenants, I elected to hear all the applications of the parties.

Tenant HC, landlord TSH, their daughter, MD, landlord H-T-N, and their daughter, LD, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Tenant LH did not attend the hearing, and I was presented with undisputed evidence that he vacated the rental unit.

Pursuant to Residential Tenancy Branch Rules of Procedure (Rules) 7.3, as the tenant LH failed to attend the hearing on his own application, I order LH's application **dismissed**,

without leave to reapply. As the tenant LH has vacated, I find it was unnecessary to issue the landlord an order of possession of the rental unit.

Additionally, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant HC indicated several matters of dispute on the first application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the tenant's 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.

Additionally, the parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the 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, all parties **affirmed** they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

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.

Additionally, since the landlord, TSH, filed their application, the residential property has changed ownership. The tenant, HC, named both the current and original landlord as respondents in his application. I therefore find it necessary and appropriate to include the current landlord, H-T-N, on any orders made in this application.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Tenant's application:

Is the tenant HC entitled to cancellation of the landlord's 10 Day Notice?

Landlord TSH's application:

Is the landlord entitled to an order of possession of the rental unit, a monetary order for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The rental unit is a room located in the residential property and the tenant has a single room occupancy tenancy.

TSH was the original landlord/owner, and H-T-N is the subsequent and current landlord/owner.

The original landlord's agent, MD, submitted that they sold the residential property to the current landlord, and the sale closed on April 20, 2021. The current landlord intends on residing in the residential property, when they are able to gain vacant possession.

I also heard testimony that the new owner took over in March 2021.

As to the start of the tenancy, I was not provided a written tenancy agreement. The tenant said the tenancy began in September 2020 and the landlord's agent said the tenancy began in July 2020. The parties agreed that monthly rent was \$700, due on the first day of the month.

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 landlord through their agent, submitted that this tenant was served with the 10 Day Notice on February 5, 2021, by attaching it to the tenant's door. The 10 Day Notice, filed in evidence, showed a move-out date of February 14, 2021, an unpaid monthly rent in the amount of \$2,180, which was due on February 10, 2021. The landlord filed a signed and witnessed proof of service of the 10 Day Notice.

The landlord explained that the amount on the Notice related to unpaid monthly rent of \$700 for December 2020, January and February 2021, each, for a total of \$2,100. The landlord's evidence also listed an additional \$80, which was said to be \$20 for unpaid

utility charges of \$20 each for October, November and December 2020 and January 2021.

The landlord submitted that the tenant did not pay monthly rent to them listed on the Notice and that he also did not pay the monthly rent for March, April or May 2021, to the new owner, and owes a total rent deficiency of \$4,200, overall.

For this reason, the landlord requested an order of possession of the rental unit and a monetary order for unpaid monthly rent.

Tenant's response-

The tenant denied he received the 10 Day Notice that was posted to his door on February 5, 2021, but confirmed that he received the 10 Day Notice served on him by the new owner, on April 5, 2021 and made his application on April 7, 2021. Filed in evidence was a copy of the 10 Day Notice.

The tenant said he has not paid rent since December 2020, as someone named (*A*) told him to leave and they did not want the monthly rent to be paid.

The tenant has claimed multiple reasons why he would not pay the rent, which were related to the balance of his application, now severed.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Notice issued on February 5, 2021

The tenant denied receiving the original landlord's Notice on February 5, 2021, but he confirmed receiving the Notice served by the current landlord/owner on April 5, 2021.

In this case, I find the original landlord submitted sufficient evidence that they served the tenant with the 10 Day Notice on February 5, 2021, when it was posted on the tenant's door. I reached this finding due to the landlord's witnessed and signed proof of service as well as information within the tenant's application.

The tenant named both the original landlord/owner and the current landlord/owner as respondents in his application seeking cancellation of the 10 Day Notice, although the current landlord, H-T-N, was the only name listed on that Notice of April 5, 2021. In other words, the tenant has named a party from a Notice he said he did not receive, which I find calls into question the reliability of the tenant's evidence.

I find the original landlord submitted sufficient evidence, on a balance of probabilities, the tenant was served with their Notice on February 5, 2021. I find the tenant was deemed to have been served on February 8, 2021. The Notice listed unpaid monthly rent of \$2,100 and unpaid utility charges of \$80.

I have reviewed the Notice of February 5, 2021, and find it complies with section 52 *[form and content of notice to end tenancy]*. I also find it more likely than not that the landlord made a clerical error when they listed the unpaid monthly rent due as of February 10, 2021, and that it should have been listed as of February 1, 2021. I do not find this clerical error impacts the effects of the Notice.

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. The tenant presented no evidence that he had a legal right to withhold the monthly rent.

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.

The tenant did not dispute the Notice and admitted they have not paid any rent since December 2020.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, February 18, 2021.

As a result, I order the tenancy ended on February 18, 2021, and that the landlords are entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

I grant the landlords a final, legally binding order of possession of the rental unit. 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 subject to recovery from the tenant.

Notice issued on April 5, 2021

The tenant made an application on April 7, 2021, to dispute the notice to end tenancy issued by H-T-N on April 5, 2021. However, as I have found the tenancy has legally ended based on the Notice, issued on February 5, 2021, I do not need to consider this issue. Further, the tenant admitted they did not pay any rent since December 2020.

Monetary claim-

I find it reasonable that the landlords be allowed to amend their application to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of \$4,200, due under the tenancy agreement for the months of December 2020, and January, February, March, April and May 2021, or \$700 each month. The tenant confirmed that himself. I find the landlords have established a monetary claim of \$4,200 for unpaid monthly rent.

As the landlord's application had merit, I grant them recovery of their filing fee of \$100.

I have not granted the landlords any monetary compensation for unpaid utility charges as I find there was insufficient evidence to support what amount of utilities may be owed under a tenancy agreement.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,300.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary 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 subject to recovery from the tenant.

I also **dismiss with leave to reapply** the landlord's monetary claim against tenant LH. I elected to dismiss that part of their application, as they used a single application to

make a single claim against two separate tenants and the primary issues at this hearing was whether they would be granted an order of possession of the rental unit for the tenant remaining and a monetary order against HC.

Tenant HC's application-

As the tenancy is ending, I **dismiss without leave to reapply** the tenant's request for orders for the landlord, as these matters relate to an ongoing tenancy.

I **dismiss with leave to reapply** the tenant's claim for monetary compensation.

Conclusion

The landlord's application seeking an order of possession of the rental unit and a monetary order for unpaid monthly rent has been granted. The landlords have been issued an order of possession of the rental unit, effective 2 days after service on the tenant, and a monetary order for unpaid monthly rent and recovery of the filing fee, for a total amount of \$4,300.

The landlords are at liberty to make a future claim against tenant LH.

The monetary claim of the tenant is dismissed, with leave to reapply, as these issues are separate and apart from the other issues relating to an ongoing tenancy.

The tenant, LH's application is dismissed, 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: May 17, 2021

Residential Tenancy Branch