



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenants (hereinafter the “tenant”) filed an Application for Dispute Resolution (the “Application”) on April 9, 2021 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 17, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. The tenant confirmed they received the prepared evidence of the landlord in advance of the hearing. The tenant also confirmed they did not prepare documentary evidence in advance for this hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Neither party submitted a copy of the tenancy agreement; however, the tenant provided its' basic terms on their Application and the landlord verified the basic terms at the start of the hearing. The rent was \$950, payable on the 1st day of each month. They paid a security deposit of \$475. The tenancy started on January 1, 2021 and the tenant to this day remains in the unit.

In their Application, the tenant provided that the landlord served a 10-Day Notice on April 5, 2021. This was posted on the door. The copy in the landlord's evidence shows the date of April 6, 2021 with the final end-of-tenancy date of April 19, 2021.

The landlord spoke to their reasons why they issued the 10-Day Notice. This was due to repeated late payments of rent since the start of the tenancy. When they served the document on April 6, 2021, rent was only partially paid for that month, for \$500. This left \$450 owing as of April 6, 2021.

Prior to this, the landlord issued a 10-Day Notice on January 20, and again on February 5, 2021. The landlord provided copies of three receipts for each of those months; this shows partial payments were made throughout the month. This shows rent has not been paid each month on time. The landlord added in the hearing that they received no rent payments for May 2021, and also served another 10-Day Notice to the tenant for this reason.

The tenant made it plain in the hearing that they were not challenging that rent amounts were still owed. They also conceded that rent has not been paid fully on time as specified in the tenancy agreement. Rather, they presented that the landlord stated to them that there was a Two-Month Notice to End Tenancy issued around mid-February, seemingly for the issue of drain repairs in the rental unit. They attempted to clarify with the landlord that a 2-Month Notice would mean one month rent-free, but when the landlord could not accept this, the landlord then served a 10-Day Notice.

Analysis

The *Act* s. 46 states, in part:

- 46** (1)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.

The *Act* s. 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
. . . and
 - (e) when given by a landlord, be in the approved form.

I find the tenant was aware of all the relevant information. I am satisfied the tenant was at all times fully informed of the end of tenancy, the timelines thereof, and the reasons why the landlord issued the 10-Day Notice.

Moreover, the tenant was fully aware of their right to either pay the rent or apply for dispute resolution, as stated on the 10-Day Notice. The tenant did proceed with their Application for Dispute Resolution on April 9, 2021.

The *Act* s. 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I find the tenant did not have the right to withhold payment of rent. The tenant testified and gave evidence that they were working in line with a Two-month Notice to End Tenancy. They did not provide a copy of said document. I find there was no such document issued; therefore, there is no rent-free month granted. This is not sufficient evidence, as presented by the tenant, on why they feel they were not required to pay the rent.

The tenant conceded on rent amounts owing. They provided they were preparing to move out from the unit on June 1. Further, they stated “if the issue is money, I will pay that.”

For these reasons, I dismiss the tenant’s application to cancel the 10-Day Notice. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant’s application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the landlord served the 10-Day Notice with complete details on April 6, 2021. The move out date of April 19, 2021 was completed in the document.

I find the 10 Day Notice, as described in the hearing complies with the requirements for form and content with each detail. These are, as in s. 52: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e., the move out date); and the

grounds for ending the tenancy. The landlord provided a copy of the document; from this, I find it is in the approved form as specified in the *Act*.

Given my finding that the 10-Day Notice complies with the requirements of form and content, the landlord is entitled to an order of possession on the effective date indicated.

The *Act* s. 55(1.1) specifies that I must grant an order requiring the payment of the unpaid rent. In line with this, I grant the landlord a monetary order for the amount of \$450 which is the amount owing for April 2021.

Conclusion

For the reasons outlined above, I dismiss the tenant's application for a cancellation of the 10-Day Notice, without leave to reapply.

For the reasons above, I grant an Order of Possession to the landlords effective 1:00 p.m. on May 31, 2021. The landlord must service this Order of Possession 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.

I order the tenant to pay the landlord the amount of \$450. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) and 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 18, 2021

Residential Tenancy Branch