



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1104719 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNC, CNR, FFT

Landlord: OPR-DR, OPRM-DR, FFL

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenant filed a claim:

- to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated April 5, 2021 (“10 Day Notice”);
- to cancel a One Month Notice to End Tenancy for Cause (“One Month Notice”); and
- to recovery of her \$100.00 application filing fee.

The Landlord filed a claim:

- for an order of possession for unpaid rent, further to having served the 10 Day Notice;
- with a request for a monetary order of \$1,725.00 for outstanding unpaid rent from the Tenant; and
- to recover their \$100.00 application filing fee.

Introduction

The Tenant and an agent for the Landlord, D.S. (the “Agent”), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and

written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agent said that the Landlord received the Tenant’s Notice of Hearing, Application, and evidentiary submissions by email from the Tenant, and that she had reviewed these submissions. However, the Tenant said that she received only the Landlord’s Notice of Hearing documents, but not any evidence. The Landlord said that she was planning on addressing the evidence in her testimony today. I note that the Parties have submitted much the same evidence; however, I will consider only the evidence that the Tenant has submitted, and not that of the Landlord, other than the Landlord’s testimony.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

There are three file numbers – one for the Landlord and two for the Tenant - because the Tenant applied for dispute resolution twice, rather than having amended her initial claim to cancel the One Month Notice to include her claim to cancel the 10 Day Notice. However, I have considered both applications in this proceeding.

Section 55 of the Act states that if a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is either Party entitled to recovery of their \$100.00 application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2020 and was to run to May 1, 2021, with a monthly rent of \$900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$450.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full.

In the hearing, the Parties agreed that the 10 Day Notice was signed and dated April 5, 2021, it has the rental unit address, it was served by attaching it to the rental unit door on April 5, 2021, with an effective vacancy date of April 18, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay her rent when it was due on April 1, 2021. The Landlord noted that her colleague drafted and served the 10 Day Notice and that she erroneously wrote that the Tenant had failed to pay \$825.00, rather than \$900.00. However, the Tenant acknowledged that she had not paid any rent for May or June 2021, although she had paid April's rent in May 2021, but no further rent for May 2021.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Landlord's application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$1,725.00 to \$1,800.00.

In the hearing, the Parties agreed that the One Month Notice was signed and dated February 22, 2021, that it has the rental unit address, and that it was served in person; however, the Agent could not tell me when it was served to the Tenant. The One Month Notice has an effective vacancy date of March 31, 2021. The One Month Notice was served on the grounds that the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Parties agreed in the hearing that the Landlord served the Tenant with a 10 Day Notice that was signed and dated April 5, 2021, and which has the rental unit address. They agreed that it was served by posting it on the rental unit door on April 5, 2021, with an effective vacancy date of April 18, 2021. They agreed that the 10 Day Notice was served on the ground that the Tenant failed to pay \$825.00 when it was due on April 1,

2021, although, I have already noted above that this amount was entered in error. As the Tenant acknowledged how much she owes, I found it was not prejudicial to the Tenant to correct this error to \$900.00, which was the amount of rent that was not paid to the Landlord by the Tenant on April 1, 2021.

In the hearing, the Agent explained why the Tenant was served the 10 Day Notice. The Agent said:

Because I haven't received any rent. I asked for rent to be paid within 10 days, and she didn't pay it. She paid in May for April's rent, but not for May or June.

I asked the Agent when the rent for April 2021 was paid by the Tenant and the Landlord said:

She sent an etransfer for \$900.00 in May and said that, that was her rent for May, and I said no, you still owe for April and now you owe for May and June. This is why I issued the two 10 Day Notices.

The Tenant said:

Well, it is true that I haven't paid June. But my oven stopped working. I also messaged them that I've been having issues with my job, and I had asked for an extension for June. My boss fired me and hasn't paid me yet.

The Tenant said she thought she had paid some rent to the Landlord twice in May; however, she could not point to any evidence she had submitted to support this claim, therefore, I have not considered this claim. When asked if she had paid rent for May or June, the Tenant acknowledged that she had not paid the Landlord rent for either month.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

. . .

I reviewed all of the Tenant's relevant documentary evidence and both Parties' oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on April 8, 2021, three days after it was posted on her rental unit door.

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 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. In the hearing, the Agent said that the Landlord is owed **\$1,800.00** in unpaid rent from the Tenant, as of June 1, 2021.

I find that both Parties acknowledged that the Tenant owes the Landlord \$1,800.00 in rent for the months of May and June 2021. As a result, I find that the 10 Day Notice is valid and enforceable, and I find that it is consistent with section 52 of the Act, as to form and content. I, therefore, dismiss the Tenant's application to cancel the 10 Day Notice, without leave to reapply. Given this result, I also dismiss the Tenant's claim for recovery of her application filing fees without leave to reapply.

Given my findings above, I further find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for May or June 2021, the **Order of Possession will be effective two days after service** of the Order on the Tenant.

I also award the Landlord with **\$1,800.00** in unpaid rent from the Tenant, pursuant to section 67 of the Act. Given the Landlord's success in this matter, I also award the Landlord with recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act. The Landlord is authorized to retain the Tenant's \$450.00 security deposit in partial payment of these awards. I grant the Landlord a Monetary Order of **\$1,450.00** from the Tenant for recovery of the remaining monetary awards.

Given the result of the 10 Day Notice, I find that it is not necessary to consider whether the One Month Notice is valid or not. Accordingly, I dismiss the Tenant's application to cancel the One Month Notice, and I dismiss the Landlord's application for an order of possession pursuant to the One Month Notice, and both are dismissed without leave to reapply.

Conclusion

The Tenant has not paid rent for the last two months, so her applications are dismissed wholly without leave to reapply. The Landlord is successful in their application, as the Parties agreed with the Landlord's claim of unpaid rent from the Tenant.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded recovery of \$1,800.00 in unpaid rent from the Tenant, as well as recovery of the Landlord's \$100.00 application filing fee, for a total monetary award of \$1,900.00. The Landlord is authorized to retain the Tenant's \$450.00 security deposit in partial satisfaction of the monetary awards. The Landlord is granted a Monetary Order of **\$1,450.00** for the remaining amount owing to the Landlord by the Tenant, pursuant to section 67 of the Act. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 07, 2021

Residential Tenancy Branch