



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 24, 2021 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). Additionally, they seek authorization to change the locks to the rental unit, and a reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 1, 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.

At the outset, the tenant provided they sent their prepared evidence to the landlord via email on March 26, 2021. They provided an image of the email transaction showing this. The landlord confirmed they received the tenant’s prepared evidence in this manner.

The landlord stated they could not provide their evidence to the tenant due to court-imposed orders regarding their contact with the tenant. This means they did not forward the pieces they prepared regarding lack of rent payments to the tenant in advance of the hearing.

The *Residential Tenancy Branch Rules of Procedure* sets out the rule for the respondent’s evidence. By Rule 3.15, they must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. This is not less than seven days before the hearing. I advised the parties at the outset of the hearing that landlord’s evidence may or may not be considered depending on the scenario and the way it is relied upon by either party. On any relevant piece, I would decide whether the tenant needed opportunity to review that specific piece. This is an application of Rule 3.17.

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?

Is the tenant entitled to an order authorizing their change for the locks in the rental unit?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

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.

The tenant provided a copy of the tenancy agreement and both parties verified its' specific terms in the hearing. The rent was \$1,800 payable on the first day of each month. They paid a security deposit of \$900. The tenancy started on January 14, 2021, and the tenant paid a pro-rated amount at that time.

The tenant to this day remains in the unit. They provided that they have not spent one night in the unit; however, their belongings are in the unit and they routinely visit and use the space for completion of schoolwork. They have another extant agreement for their current living arrangement elsewhere.

They stated they paid the February rent on time; after this, they did not pay rent. This is due to what they feel is the broken tenancy agreement, where the incident of January 14, 2021 leading to a charge against the landlord interrupted their right to quiet enjoyment of the rental unit. This was a concern for the personal safety whilst staying within the rental unit.

In their Application, the tenant provided that the landlord served a 10-Day Notice on March 23, 2021. This was served in person. The copy the tenant provided into the evidence shows the landlord's signature on March 22, 2021 with the final end-of-tenancy date as March 31, 2021.

The landlord spoke to the manner in which they served the 10-Day Notice to the tenant. This was via one of their friends, who delivered the document to the tenant in person on March 23. The tenant confirmed this manner of service.

The document page 2 shows the tenant's failure to pay the \$1,800 for February, and utility amounts of \$46.70 as the basis for the landlord's issuance of the 10-Day Notice.

The landlord spoke to their reasons why they issued the 10-Day Notice. This was due to the initial non-payment of rent for March 2021. They provided that the tenant did not pay rent for the following months of April and May. They specified that the tenancy agreement states that utility amounts are to be paid by the tenant. They were never informed by the tenant that the tenancy agreement had ended.

The tenant also stated in the hearing that they wish to move out from the unit as soon as possible. Their concern is that this agreement with the landlord here still stands. They have made other living arrangements and have an agreement for their other living arrangement.

In their Application, the tenant indicated their wish for authorization to change the locks. In the hearing the tenant stated this was in the event that the tenancy would not end, and also this was to address any immediate concerns for their safety.

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, I find 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 March 24, 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. They testified they felt the agreement was not in force because of the interruption to their quiet enjoyment. This is not a valid reason for withholding rent under the *Act*, and the requirement for rent payment as provided for in s. 26 is paramount. There is no record that the tenant was authorized to withhold rent by any order of the *Residential Tenancy Branch*. This is not sufficient evidence, as presented by the tenant, on why they feel they were not required to pay the rent. Because of this, I find there is no avoidance of their responsibility to do so.

For these reasons, I dismiss the tenant's application to cancel the 10-Day Notice. I find the landlord issued this document for a valid reason. 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 March 23, 2021. The move out date of March 31, 2021 was completed in the document.

I find the 10-Day Notice 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 tenant 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 therein.

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 \$1,800 which is the amount owing for March 2021. The landlord must apply for compensation for other amounts

owing beyond this in a separate dispute resolution process, including any remaining utility amounts.

Given that the tenancy is ending, the tenant's request for authority to change the locks is dismissed without leave to reapply.

Because they were not successful in their Application, the tenant's claim for the Application filing fee is dismissed without leave to reapply.

Conclusion

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

For the reasons above, I grant an Order of Possession to the landlords effective **TWO DAYS after service of this Order** the tenant. The landlord must serve 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 \$1,800, pursuant to s. 55(1.1) of the *Act*. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) 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: June 1, 2021

Residential Tenancy Branch