



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, MNRL, FFL, CNR, LRE

Introduction

This hearing dealt with cross applications. The tenant applied to dispute a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* ("10 Day Notice") and to seek orders suspending the landlord's right to enter the rental unit. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and NSF costs.

Both parties appeared and/or were represented during the hearing. The parties were affirmed and the parties were ordered to not record the proceeding.

I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted their materials into evidence for consideration in making this decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Naming of landlord(s)

The tenant named two landlords on her application. Only one landlord was named on the landlord's application. I heard that that the landlord's application named the registered owner of the property. The tenant named the registered owner and the owner's father who has been dealing with the tenant throughout the tenancy. The

landlord submitted his father has been acting as his agent. Both an owner and an owner's agent meet the definition of "landlord" as provided under section 1 of the Act. As such, it is acceptable to name both the owner and the owner's agent in the style of cause of this decision.

The owner requested that the orders I provide with this decision name only him. I did not see any prejudice to the tenant in doing so and the tenant did not have any objections. Accordingly, this decision identifies the landlords as being the owner and the owner's agent; however, the orders name only the owner as the landlord.

2. Dismiss unrelated claims

The tenant confirmed that he continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 10 Day Notice and I severed the tenant's request for orders suspending the landlord's right to enter the rental unit pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

For reasons provided in this decision, I have determined the tenancy has ended for unpaid rent. As such, I dismiss the tenant's request for orders suspending the landlord's right to enter the rental unit without leave to reapply. However, the landlord remains obligated to not enter the rental unit unless it is in accordance with section 29 of the Act while the tenant remains in possession of the rental unit.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and NSF costs?

Background and Evidence

On December 26, 2018 the parties executed a written tenancy agreement for a tenancy set to commence on March 1, 2019 and the tenant paid a security deposit of \$950.00. The parties subsequently agreed to change the tenancy start date to February 15, 2019 and the tenancy agreement was changed to reflect a start date of February 15, 2019.

The tenant was permitted early possession of the rental unit in January 2019 for the purpose of making renovations to the rental unit. Starting February 15, 2019, the tenant was required to pay rent of \$1900.00 on the first day of every month for a three year fixed term set to expire on February 28, 2022. A notation on the tenancy agreement indicates the rent would be subject to the annual allowable rent increase permitted by the Act.

On December 30, 2019 the landlord issued a Notice of Rent Increase to increase the rent to \$1949.40 starting April 15, 2020. Despite the Ministerial Order suspending rent increases from taking effect due to the Covid-19 pandemic, the landlord collected rent and charged the tenant rent for the increased amount of \$1949.40. During the hearing, the landlord conceded this should not have been done and that the monthly rent should have remained at \$1900.00 based on the Ministerial Order. The landlord requested the amounts claimed be amended to reflect the rent at the lower rate of \$1900.00 per month. As this is beneficial for the tenant, I amended the landlord's claims accordingly.

The tenant paid rent for April 2020 in the amount of \$1949.40 but did not pay rent for May 2020 through August 2020, except one \$300.00 payment was received by the landlord under the BC Government Temporary Rent Supplement program ("TRS").

On September 11, 2020 the landlord issued a Repayment Plan to recover the unpaid rent for the months of May 2020 through August 2020, with repayments set to start in January 2021, at the tenant's request, in the amount calculated to be \$576.74 based on the monthly rent of \$1949.40.

For the month of September 2020, the tenant did not pay rent. The parties agreed that the landlord may take the security deposit in partial satisfaction of the unpaid and the landlord agreed to defer collection of the remainder of rent owing for September 2020 until the tenancy ended.

The tenant paid rent for the months of October 2020 through January 2021 in the amount of \$1949.40 per month. Plus, the tenant made a rent Repayment Plan payment of \$576.74 in January 2021.

For the month of February 2021, the tenant communicated to the landlord that she was having difficulty coming up with the rent money and the landlord agreed to defer collection of rent for February 2021 and the rent Repayment Plan payment for February 2021 until the end of the tenancy. However, the landlord also put the tenant on notice that any future missed payments would not be permitted and result in issuance of a 10 Day Notice.

For the month of March 2021, the tenant did not pay rent or the rent Repayment Plan payment that was due. On March 19, 2021 the landlord issued the subject *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* indicating rent of \$2526.14 was outstanding as of March 15, 2021 and a stated effective date of April 5, 2021. The 10 Day Notice was sent to the tenant by registered mail on March 19, 2021 and Canada Post recorded that it was delivered on March 23, 2021. The tenant testified that she found the 10 Day Notice in her mailbox on March 26, 2021.

The landlord explained that the sum of \$2526.14 is the sum of \$1949.40 for March 15, 2021 rent and the rent Repayment Plan payment of \$576.74. The tenant confirmed she understood how the sum was calculated.

Both parties provided consistent submissions that after serving the 10 Day Notice the tenant did not pay any monies toward the outstanding rent. Nor, did the tenant pay any further monies for subsequent months and she continues to occupy the rental unit.

The landlord's lawyer submitted that the post-dated rent cheques and rent Repayment Plan cheques dated April 15, 2021 and May 15, 2021 were deposited, for use and occupancy only, but were dishonoured due to insufficient funds.

The tenant disputed the 10 Day Notice within 5 days of receiving the 10 Day Notice. The tenant submitted that she had suffered loss of income attributable to the Covid-19 pandemic and then she suffered a dental emergency on March 1, 2021 that required a

costly dental procedure. The tenant seeks to have the costs she incurred to renovate the rental unit offset against the rent she did not pay and up until August 15, 2021. The tenant submitted that she spent \$19652.85 on the renovation.

As for the agreement concerning the renovation, the tenant submitted that she had the landlord's permission to make renovations up to \$20,000.00 and in exchange she would be provided a fixed term tenancy of three years and a reduced rental rate of \$1900.00 per month, subject to annual allowable rent increases permitted by the Act. The tenant acknowledged that the agreement concerning the renovation was captured in the tenancy agreement the parties executed. The tenant also conceded that this tenancy is subject to ending because of her failure to pay rent and the rent repayment due for March 2021.

The tenant proposed that since the tenancy is ending prior to end of the fixed term, the landlord offset the rent owed by at least some of the renovation costs. The landlord was not agreeable to doing so at this time, stating the landlord is of the position he has been very accommodating with deferring rent payments and delaying the start of the rent Repayment Plan, all for the tenant's benefit.

During the hearing, I gave the parties my preliminary findings that the tenancy was at an end due to unpaid rent and I explored the effective date for an Order of Possession. The parties made their respective requests but eventually found common ground on giving the tenant at least two weeks to vacate the property.

As for the landlord's monetary claim, the landlord prepared a Monetary Order worksheet outlining the months for which rent was not paid in full up to and including May 2021. The tenant was asked to review the document and upon doing so she concurred that the worksheet is accurate, with the exception of the amount of the monthly rent which should be \$1900.00 per month.

The landlord also requested recovery of two \$7.00 NSF charges incurred due to the dishonoured rent and rent repayment cheques in April 2021.

Documentary evidence provided by the parties included: the tenancy agreement; the 10 Day Notice; the rent Repayment Plan; confirmation of TRS received from the government; Monetary Order worksheet; various written communication with each other; receipts to demonstrate renovations made to the rental unit by the tenant; bank statements of the landlord; and, proof of service for hearing materials.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, the tenant did not pay the outstanding rent but filed to dispute the 10 Day Notice. Whether the tenant received the 10 Day Notice on March 23, 2021 as indicated by Canada Post, or on March 26, 2021 as the tenant testified, I am satisfied the tenant filed to dispute the 10 Day Notice within five days, on March 28, 2021.

Based on the tenancy agreement, the tenant was required to pay rent of \$1900.00 on the 15th day of every month. Despite issuing a Notice of Rent Increase in December 2019, rent increases were frozen by way of a Ministerial Order issued in response to the Covid-19 pandemic with the effect that a Notice of Rent Increase already issued was not enforceable. Accordingly, I find the Notice of Rent Increase dated December 30, 2019 became ineffective and unenforceable with the result that the rent payable remained at \$1900.00.

The Act provides very specific and limited circumstances where a tenant has a legal right to withhold rent otherwise payable. They are where: a tenant has overpaid a security deposit or pet damage deposit; a tenant has paid an unlawful rent increase; the tenant has been given a rent reduction pursuant to a Notice to Terminate a Service or Facility by the landlord; the tenant has paid for emergency repairs to the property under section 33 of the Act; or, the tenant has been given authorization to reduce or withhold rent by the landlord or an Arbitrator. In addition, the Ministerial Orders issued in response to the Covid-19 pandemic suspended a landlord's ability to issue a 10 Day Notice if a tenant failed to pay rent that was otherwise payable during the "specified period" of March 18, 2020 through August 17, 2020.

The tenant failed to pay rent due for May 2020 through August 2020 (referred to as "affected rent") and was protected from termination of the tenancy due to the Ministerial Orders. The tenant also failed to pay rent for September 2020 but the landlord agreed

to defer collection until the tenancy ends. The tenant also failed to pay rent for February 2021 but the landlord agreed to defer collection until the tenancy ends. The landlord is not seeking to end the tenancy for any of these missed rent payments. Rather, the landlord is seeking to end the tenancy for the missed rent payment and rent Repayment Plan payment that were due March 15, 2021 despite putting the tenant on notice that further missed rent payments would not be tolerated. As such, I find the landlord was in a position to issue the 10 Day Notice on March 19, 2021 due to the missed rent and rent Repayment Plan payments that were due on March 15, 2021.

As for the tenant's payment of an unlawful rent increase, I find the tenant's payments of \$1949.40 for the months of April 2020 and October 2020 through January 2021 amount to paying an unlawful rent increase of \$49.40 for five months, or \$247.00, and the tenant was legally entitled to withhold this sum from rent otherwise payable. Despite having the legal right to pay rent of only \$1900.00 less \$247.00 for March 2021 the tenant paid nothing, leaving rent outstanding and no other legal basis for not paying the balance.

The tenant raised the issue of making renovations to the rental unit just prior to the start of her tenancy; however, by her own acknowledgement she was to be provided a fixed term tenancy for three years and a reduced rent of \$1900.00 per month, subject to the annual allowable rent increases permitted under the Act, in exchange for her renovations. These terms were captured in the tenancy agreement and the landlord was not obligated to compensate the tenant in any other way for the renovations. The tenancy is ending due to the tenant's failure to meet her obligation to pay the monthly rent of \$1900.00, as required under their agreement. Therefore, I see no legal basis to cancel the 10 Day Notice and offset the outstanding rent by the renovation costs.

In light of the above, I dismiss the tenant's application that I cancel the 10 Day Notice and I find the tenancy is ended due to unpaid rent. I find the landlord entitled to regain possession of the rental unit and with this decision I provide the landlord with an Order of Possession effective 14 days after service of the order upon the tenant, as discussed by the parties during the hearing.

Having found the tenancy has ended, I find the landlord entitled to recover the affected rent due the specific period; the rent payments that were deferred by the landlord until the end of the tenancy; and, any other month(s) for which rent was not paid, at the monthly rate of \$1900.00, less recovery of the unlawful rent increases that were paid by the tenant. I further award the landlord loss of rent for April 15, 2021 and May 15, 2021 since the tenant has continued to occupy the rental unit.

I find the landlord entitled to recover the following amounts for unpaid and/or loss of rent, as calculated below:

Month	Rent/loss of rent payable to landlord	Less: Payment received/credit to tenant	Net rent owing to landlord
May 2020	\$1900.00	\$300.00 TRS	\$1600.00
June 2020	\$1900.00		\$1900.00
July 2020	\$1900.00		\$1900.00
August 2020	\$1900.00		\$1900.00
September 2020	\$1900.00	\$950.00 Security Deposit applied to rent	\$950.00
January 2021		\$576.74 Repayment Plan payment made	-\$576.74
February 2021	\$1900.00		\$1900.00
March 2021	\$1900.00		\$1900.00
April 2021	\$1900.00		\$1900.00
May 2021	\$1900.00		\$1900.00
Less: recovery of unlawful rent increase for April 2020 and Oct 2020 – Jan 2021		\$49.40 x 5 months = 247.00	-\$247.00
Totals	\$17100.00	\$2073.74	\$15026.26

With respect to the NSF charges, section 7 of the Residential Tenancy Regulations permits a landlord to recover the actual cost of bank fees incurred where a tenant's cheque is dishonoured. Considering the tenant was disputing the 10 day Notice and was continuing to occupy the rental unit, I find it reasonable that the landlord would attempt to deposit the cheques in the landlord's possession while the tenant was continuing to occupy the rental unit. Therefore, I grant the landlord's request to recover the NSF charges in the sum of \$14.00.

I further award the landlord recovery of the \$100.00 filing fee paid for his Application for Dispute Resolution.

Provided to the landlord with this decision is a Monetary Order in the sum of \$15140.26 [calculated as: \$15026.26 rent + \$14.00 NSF charges + \$100.00 filing fee].

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is provided an Order of Possession effective 14 days after service of the Order of Possession upon the tenant.

The landlord is provided a Monetary Order in the sum of \$15140.26 to serve and enforce upon the tenant.

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: June 02, 2021

Residential Tenancy Branch