



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, MNDCT, LRE**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by their family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant testified that they received the landlord's 10 Day Notice dated March 8, 2021 on March 10, 2021 and filed their application for dispute resolution on March 11, 2021. The landlord confirmed receipt of the tenant's application and materials.

The landlord testified that they served the tenant with their evidentiary materials by registered mail sent on May 25, 2021. The landlord provided a valid Canada Post tracking number noted on the first page of this decision as evidence of service. The

Canada Post tracking information shows that the materials have been available for pickup since May 26, 2021.

Section 88 of the *Act* provides in relevant part:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 90 provides that:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the fifth day after it is mailed;

Residential Tenancy Policy Guideline 12 sets out that:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find that there is overwhelming evidence in support of the landlord's position that the evidentiary materials were served on the tenant by registered mail. I find the tenant's refutation to be insufficient to override the deeming provisions of the *Act*. The tenant provided no cogent explanation as to why they have not picked up the evidentiary materials. Under the circumstances I find that the tenant is deemed served with the landlord's materials on May 30, 2021, five days after mailing in accordance with sections 88 and 90 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The current monthly rent for this tenancy is \$1,508.00 payable on the 1st of each month. The tenant is also required to pay \$829.00 on the 1st of each month in accordance with a valid Repayment Plan issued under *The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* (“C19 Tenancy Regulation”) and affirmed in the order of another Arbitrator in a previous hearing under the file number on the first page of this decision. Cumulatively the tenant is required to pay \$2,337.00 on the 1st of each month.

The landlord submits that the tenant failed to pay rent and the repayment portion as required on March 1, 2021 and issued a 10 Day Notice to End Tenancy for Unpaid Rent dated March 8, 2021 for the arrear of \$2,337.00. The landlord says that the tenant paid a sum of \$2,336.00 on March 10, 2021 by electronic fund transfer. The landlord testified that the tenant has consistently failed to pay the full amount of the rent and repayment and there is presently an arrear of \$7.00. The landlord submitted into documentary evidence their bank statements showing the tenant’s payments of \$2,336.00 over the past several months.

The tenant testified that they paid the full amount of \$2,337.00 on March 1, 2021. The tenant submits that any delay in the landlord receiving the full funds is attributable to errors with the electronic fund transfer system. The tenant disputes that they have consistently underpaid the landlord one dollar.

The tenant also seeks a monetary award in the amount of \$18,096.00, an order that the landlord comply with the Act, regulations or tenancy agreement and to suspend or set conditions on the landlord’s right to enter the rental unit. The tenant provided little documentary evidence in support of their claim and gave little testimony on these claims at the hearing despite being given an opportunity to make submissions. In their notice of application, the tenant writes:

SECTION 28 LOSS OF QUIET ENJOYMENT - UNWARRENTED /UNREASONABLE TREATMENT - UNLAWFULL EVICTION NOTICES - FALSE CLAIMS UNDER OTHER JURISDICTIONS SECTION 46 SERVING EVICTION NOTICES - HISTORY OF UNLAWFUL EVICTION NOTICES -JUDGE ORDERED NOT TO GIVE/SERVE UNLAWFULL EVICTION NOTICES

I AM LEGALLY BLIND AND A SINGLE PARENT. I HAVE DISPUTED 5 EVICTION NOTICES OVER A YEAR AND A HALF. WITH THE 2 MONTH NOTICE THE TENANT RECEIVES 12 MONTH COMPENSATION IF THE OWNER SERVES IN BAD FAITH. THE EVICTION PROCESS BOTH FOR MYSELF AND MY 10 YEAR OLD DAUGHT [family member] HAS BEEN VERY ARDUOUS, STRENUOUS, AND UNREASONABLE

THE OWNER [Landlord] HAS DEMONSTRATED/HAS A HISTORY AND CONTINUES TO BE NEGLIGENT. PLEASE APPOINT ANOTHER PERSON/SOMEONE ELSE THE RESPONSIBILITY OF MANAGEMENT.

Analysis

The *C19 Tenancy Regulation* provides at subsection 6(2) that a landlord may issue a 10 Day Notice when a tenant fails to pay an installment on the date a repayment is due pursuant to a valid repayment plan.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice.

In the present case the tenant confirmed receipt of the 10 Day Notice on March 10, 2021 and filed their application for dispute resolution on March 11, 2021.

When a tenant applies to dispute a notice to end tenancy the onus falls to the landlord to demonstrate on a balance of probabilities that the tenancy should end for the reason provided on the notice.

I accept the undisputed evidence of the parties that the monthly rent for this tenancy is \$1,508.00 and that the tenant is obligated to pay \$829.00 pursuant to a valid repayment plan. I am satisfied with the landlord's evidence by way of their monthly banking statements that the tenant paid an amount of \$2,336.00, one dollar less than the required amount of \$2,337.00, on March 10, 2021.

While the tenant submits that they paid the full amount required on March 1, 2021, I find little documentary evidence in support of their testimony. If the tenant initiated an electronic fund transfer on the first of the month as they claimed for the full amount it

would be reasonable to expect that the tenant could provide some documentary materials or banking statements to support their claim. None was provided. I find the tenant's submissions, unsupported in any evidence, to not be particularly persuasive.

Based on the totality of the evidence I am satisfied that the landlord has met their evidentiary onus on a balance of probabilities to demonstrate that the tenant failed to pay the full amount of the rent and repayment on March 1, 2021. I further accept that the tenant did not pay the arrear in full within 5 days of service of the 10 Day Notice, paying only a portion but withholding \$1.00.

Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice and 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, I issue an Order of Possession enforceable 2 days after service on the tenant.

As this tenancy is ending, I find it unnecessary to make a finding on the portions of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find insufficient evidence in support of the tenant's claim. The tenant provided little documentary evidence or oral submissions in support of their claim. Based on the tenant's written submissions in their application it appears that the tenant believes that the landlord's issuance of previous notices to end tenancy gives rise to a basis for a monetary award. I find that the issuance of previous notices is insufficient to demonstrate that there has been frequent and ongoing interference that could be characterized as unreasonable. The tenant has provided little evidence to demonstrate that there have been an unreasonable number of notices issued over the course of this tenancy. Even if I were to accept the unsupported submission of the tenant that there have been 5 notices issued over the past 18 months, I find little evidence that the quantity is unreasonable under the circumstances.

I also note that while the tenant makes reference to a 2 Month Notice to End Tenancy for Landlord's Use, no copy of such a notice was submitted into evidence and there would be no right to compensation under section 51 of the *Act* for a notice that has been disputed and cancelled in any event. I find the tenant's attempt to seek a monetary award for compensation pursuant to section 51 on the basis of bad faith to be a misunderstanding of the legislation and their present application to not be supported in the evidence.

I do not find the tenant has met their onus and consequently dismiss this portion of the tenant's application.

Conclusion

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

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 21, 2021

Residential Tenancy Branch