



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPRM-DR, OPR-DR, CNR-MT

Introduction

A hearing was convened on June 22, 2021 in response to cross applications. The hearing on June 22, 2021 was adjourned for reasons outlined in my interim decision of June 22, 2021. The hearing was reconvened on June 28, 2021 and was concluded on that date.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities and a monetary Order for unpaid rent or utilities.

The Agent for the Landlord initially stated that the Landlord's Dispute Resolution Package was sent to the Tenant, via email, on March 15, 2021. Upon being advised that the Landlord's Application for Dispute Resolution was not filed until March 16, 2021, the Agent for the Landlord stated that the Landlord's Application for Dispute Resolution was never served to the Tenant. The Agent for the Landlord stated that these documents were not served to the Tenant because the documents were not provided by the Residential Tenancy Branch and because the Tenant served the Landlord with his Application for Dispute Resolution, which caused the Landlord to believe the Landlord's Application for Dispute Resolution did not need to be served.

At the hearing on June 22, 2021, the Tenant stated that he was not served with the Landlord's Application for Dispute Resolution.

Regardless of why the Landlord did not serve the evidence package to the Tenant, I am satisfied that the Landlord's Application for Dispute Resolution was not served to the Tenant.

As the Tenant has never been served with the Landlord's Application for Dispute Resolution, I must dismiss the Landlord's Application for Dispute Resolution. The Landlord retains the right to file another Application for Dispute Resolution for any issues related to this tenancy that are not resolved by this decision or the settlement agreement reached during these proceedings.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for more time to apply to cancel that Notice to End Tenancy.

At the hearing on June 22, 2021 the Tenant stated that he thinks his Dispute Resolution Package and the evidence he submitted to the Residential Tenancy Branch on March 13, 2021 was sent to the Landlord, via email, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received, via email, on March 21, 2021. As these documents were received by the Landlord, the Tenant's evidence was accepted as evidence for these proceedings.

On March 16, 2021 and on May 29, 2021, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was never served to the Tenant. As this evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

On June 25, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that he provided this evidence to the Landlord, via email, on June 25, 2021. The Agent for the Landlord acknowledged receipt of this evidence.

Residential Tenancy Branch Rules of Procedure require an Applicant to ensure that a Respondent receives all evidence at least 14 days prior to the scheduled hearing. Residential Tenancy Branch Rules of Procedure require a Respondent to ensure that an Applicant receives all evidence at least 7 days prior to the scheduled hearing. As the Landlord did not receive the June 25, 2021 submission until after the proceedings commenced on June 22, 2021 and it was only received 3 days prior to the reconvened hearing, the evidence was excluded.

At the hearing on June 28, 2021 all participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord and the Landlord affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings. The Tenant refused to affirm to speak the truth during the proceedings, citing the need to have his medical practitioner speak at the hearing on his behalf.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Agent for the Landlord and the Landlord affirmed that they would not record any portion of the proceedings. The Tenant refused to affirm he would not record any portion of these proceedings, citing the need to have his medical practitioner speak at the hearing on his behalf.

Preliminary Matter #1

The Tenant stated that he submitted a letter from his physician to the Residential Tenancy Branch on June 25, 2021.

The Tenant stated that he provided a copy of the physician's letter to the Landlord, via email, on June 25, 2021. The Agent for the Landlord acknowledged receipt of this letter.

The parties were advised that I did not have a copy of the letter from the physician.

Although the Tenant submitted evidence to the Residential Tenancy Branch on June 25, 2021, the aforementioned letter was not included in that submission. As the letter was not received by the Residential Tenancy Branch, I was unable to read the letter.

The Tenant was given the opportunity to read the letter during the hearing, which he did on three occasions. My understanding of the letter from the physician, dated June 25, 2021, is that the Tenant has multiple health issues, including mental health issues; he is currently experiencing severe anxiety and panic attacks; as a result of his health issues he is not capable of making important decisions or arranging alternate housing; his health issues are affecting his cognitive and functional abilities.

The Agent for the Landlord agreed that the Tenant has accurately portrayed the content of the letter.

The Landlord stated that:

- He is sympathetic to the health issues the Tenant is experiencing;

- The Tenant has been living in the rental unit for over ten months without paying rent; and
- The unpaid rent is causing financial hardship and personal stress for the Landlord.

While I am sympathetic to the health issues the Tenant is experiencing, I am equally sympathetic to the financial hardship the failure to pay rent is causing the Landlord.

There is nothing in the *Residential Tenancy Act (Act)* that negates a tenant's obligation to pay rent when it is due. Regardless of the reason a tenant is unable to pay rent, a landlord has the right to end a tenancy, pursuant to section 46 of the *Act*, when rent is not paid when it is due. In these circumstances, the Tenant has not paid rent in over ten months and I find delaying these proceedings would be highly prejudicial to the Landlord.

I find that physician's declaration that the Tenant is incapable of arranging alternate housing is not relevant to these proceedings. While that information may assist the Tenant in finding support to secure alternate accommodation, it does not negate the Landlord's right to end this tenancy for unpaid rent.

While I accept the medical finding that the Tenant's health issues affect his cognitive functioning, I find there is insufficient evidence to conclude that his cognitive ability prevents him from participating in these proceedings. I specifically note that the physician was not willing to testify during the proceedings, which made it impossible to clarify that those cognitive impairments render the Tenant incapable of answering basic questions, such as whether rent was paid.

Although the Tenant was argumentative and uncooperative during much of the hearing on June 28, 2021, he was engaged, cooperative, and communicated well while the parties were discussing the terms of a settlement agreement and while he was discussing his medical condition. On the basis of his demeanour and responses during those discussions, I am satisfied that the Tenant was capable of participating in these proceedings and of providing basic information that is relevant to the proceedings.

In the absence of evidence that clearly establishes the Tenant was unable to participate in the hearing on June 28, 2021, I find it would be unfair to the Landlord to further delay these proceedings. The hearing on June 28, 2021 therefore proceeded in spite of the Tenant's lack of cooperation.

Preliminary Matter #2

On several occasions during the hearing on June 28, 2021 the Tenant stated that he was in his doctor's office and that he wanted his doctor to speak on his behalf at the hearing.

The hearing commenced at 1:30 p.m. At 2:07 the Tenant advised that his doctor had entered the room. The Tenant was asked if the doctor was going to give evidence at the hearing and the Tenant advised that the doctor was too busy to participate in the hearing.

As the Tenant's doctor was not willing to participate in the hearing, no testimony from the doctor was considered.

Preliminary Matter #3

As has been previously stated, the Tenant was argumentative and uncooperative during much of the hearing, including failing to spell his name for the record, refusing to provide affirmed evidence.

Approximately 15 minutes after the hearing commenced, the Tenant was placed in "mute mode" for approximately 2 minutes, as his unsolicited comments were interfering with the hearing process. While the Tenant was in "mute mode" he could hear the proceedings but participants could not hear him if/when he spoke.

Although the Tenant continued to be uncooperative for much of the hearing, his behaviour was less disruptive and there was no further need to restrict his ability to participate fully in the hearing.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is there a need to grant the Tenant more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on February 16, 2020;

- the Tenant was required to pay monthly rent of \$2,450.00 by the first day of each month;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had an effective date of March 17, 2021, was sent to the Tenant, via email, on March 05, 2021;
- on March 05, 2021 the Tenant owed \$24,500.00 in rent;
- the Tenant has not yet paid any of the \$24,500.00 in outstanding rent; and
- the Tenant is still living in the rental unit.

The Tenant refused to confirm or deny any of the aforementioned information, citing the need to have his medical practitioner speak at the hearing on his behalf.

The Tenant submitted his Application for Dispute Resolution to the Residential Tenancy Branch on March 12, 2021. The Tenant was asked why he did not submit the Application for Dispute Resolution within five days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, in accordance with section 46(4)(b) of the *Act*. The Tenant declined the opportunity to testify in support of his application for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, citing the need to have his medical practitioner speak at the hearing on his behalf.

In his Application for Dispute Resolution the Tenant declared that he filed that Application for Dispute Resolution “late” “because the landlord's representative sent me an email on the 5th of March without sending a signed copy of the RTB-51”.

Prior to concluding the hearing both parties were given the opportunity to provide additional testimony and/or submissions. The Tenant declined this opportunity.

After discussing the merits of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Landlord and the Tenant mutually agreed to reach a settlement agreement in regard to all issues in dispute in the Tenant’s Application for Dispute Resolution. The Landlord and the Tenant agreed to settle the issues in dispute under the following terms:

- the tenancy will end, by mutual agreement, on July 31, 2021;
- the Landlord will retain the Tenant’s security deposit in partial compensation for rental arrears;
- the Tenant will not be required to pay any other rent that is currently outstanding;
- the Tenant will not be required to pay rent for July of 2021; and
- the Tenant will leave the rental unit in “decent shape” at the end of the tenancy.

The terms of the aforementioned settlement agreement were summarized for the parties on at least two occasions. The Landlord and the Tenant clearly indicated their intent to resolve this dispute under these terms.

The Landlord and the Tenant each acknowledged that they understood they were not required to enter into this agreement and that they were doing so voluntarily.

The Landlord and the Tenant each acknowledged that they understood the agreement was final and binding.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,450.00 by the first day of each month, and that on March 05, 2021 the rent was in arrears by \$24,500.00.

Section 46(1) of the *Residential Tenancy Act (Act)* permits landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was sent to the Tenant, via email, on March 05, 2021. Although the Tenant did not acknowledge or deny receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities during the hearing on June 28, 2021, I find it reasonable to conclude that he did receive the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I find it reasonable to conclude he received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities because he filed an Application for Dispute Resolution to dispute it, in which he declared he received it on March 05, 2021. As the Tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in his Application for Dispute Resolution, I find that it was sufficiently served on March 05, 2021, pursuant to section 71(2)(b) of the *Act*.

As the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and the Tenant has not yet paid all of the rent that was due at the time of service, I find the Landlord had the right to end this tenancy pursuant to section 46 of the *Act*.

As the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy

complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has not been accepted as evidence for these proceedings, I am unable to determine whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities complies with section 52 of the *Act*. As I am unable to determine whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities complies with section 52 of the *Act*, I am unable to grant an Order of Possession pursuant to section 55(1) of the *Act*.

Section 46(5) of the *Act* stipulates that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with section 46(4) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. As the Tenant did not file an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities within five days of receiving it, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended and that section 46(5) compels him to vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 66(1) of the *Act* authorizes me to extend the time limit for disputing a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities established by this *Act* only in exceptional circumstances.

I have considered the Tenant's application for more time to file his Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the basis of the written submission in his Application for Dispute Resolution, in which he declares the filing was late because he was served with an unsigned RTB-51.

A RTB-51 is the form used to provide the other party with permission to serve documents by email. Even if I accepted the Tenant's submission that he was served with an unsigned RTB-51, I would not conclude that this is an exceptional reason for not filing his Application for Dispute Resolution in accordance with section 46(4) of the *Act*. In the absence of a signed RTB-51, the Tenant remained able to serve his Application for Dispute Resolution by one of the other service methods outlined in section 89(1) of the *Act*.

As the Tenant has failed to establish that there were exceptional circumstances that prevented him from disputing the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in accordance with the timeline established by section 46(4) of the Act, I dismiss his application for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

I find that the Landlord and the Tenant mutually agreed to settle all issues in dispute in the Tenant's Application for Dispute Resolution in accordance with the following terms:

- the tenancy will end, by mutual agreement, on July 31, 2021;
- the Landlord will retain the Tenant's security deposit in partial compensation for rental arrears;
- the Tenant will not be required to pay any other rent that is currently outstanding;
- the Tenant will not be required to pay rent for July of 2021; and
- the Tenant will leave the rental unit in "decent shape" at the end of the tenancy.

As the parties were able to reach a settlement agreement at the hearing, I find that the terms of the settlement agreement supersede any finding made during this analysis. As the parties are bound by the terms of the settlement agreement, the Tenant is not required to vacate the rental unit pursuant to section 46(5) of the Act. Rather, the Tenant is required to vacate the rental unit on July 31, 2021 in accordance with the settlement agreement.

Although the Tenant was unwilling to provide evidence or answer questions during the hearing, he willingly participated in the settlement discussions. While he was argumentative and uncooperative during much of the hearing, he was engaged and cooperative while the parties were discussing the terms of the settlement agreement. On the basis of his demeanour and responses during the settlement discussions, I am wholly satisfied that the Tenant understood the terms of the settlement agreement; that he understood the agreement was final and binding; and that he was agreeing to those terms voluntarily.

On the basis of the undisputed evidence, I find that the Tenant has a letter from a physician that declares he is not capable of making important decisions; that he is not capable of arranging alternate housing; and that his health is affecting his cognitive ability. Although I have not read this letter, I believe I understand the essence of the letter.

In the absence of information from the physician that establishes he is incapable of reaching an agreement that prolongs his tenancy and forgives his debts to the Landlord, I cannot conclude, on the basis of the letter, that the Tenant was incapable of reaching a settlement agreement.

Conclusion

The Landlord's Application for Dispute Resolution was dismissed, with leave to reapply for any issues not resolved by this decision or the settlement agreement reached during these proceedings.

All issues in dispute in the Tenant's Application for Dispute Resolution have been settled in accordance with the aforementioned settlement agreement.

On the basis of the settlement agreement, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on July 31, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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 Section 9.1(1) of the *Act*.

Dated: June 29, 2021

Residential Tenancy Branch