



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call during that time. The tenant joined the call at 9:48 a.m. after the landlord had commenced his testimony.

The tenant also gave affirmed testimony and provided evidentiary material. The parties were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that the landlord had a tenancy agreement with another person, and this tenant moved in with him about 1 ½ or 2 years ago. The original tenant moved out in about April, 2020, and this tenant took over the lease and got more roommates. The tenant still resides in the rental unit, and no further tenancy agreements were made in writing. Rent in the amount of \$1,650.00 is due on the 1st day of each month. At the

beginning of the original tenancy, the landlord collected a security deposit in the amount of \$875.00, which is still held in trust for this tenancy, and no pet damage deposit has been collected. The rental unit is the upper suite in a house and the lower level is also tenanted.

The landlord further testified that on May 14, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by placing it in the mailbox. A copy has been provided for this hearing, and it is dated May 13, 2021 and contains an effective date of vacancy of May 30, 2021 for unpaid rent in the amount of \$1,675.00 that was due on May 20, 2021 and unpaid utilities in the amount of: "The amount you owe to Fortis BC following written demand on May 20, 2021."

The tenant didn't pay any rent for May, and his share is \$575.00 considering the roommates. Also, \$1,100.00 had accumulated for a couple of months that the tenant didn't pay rent. The landlord receives rent in cash or e-transfers and sometimes would collect for all tenants and it's hard to keep track. As of March 17, 2021 the tenant acknowledged in an email that he owed \$1,100.00, and a copy has been provided for this hearing. In April, 2021, the tenant paid his full amount of \$575.00, but didn't pay any rent for May, 2021.

The tenant testified that each tenant pays a portion; the tenant pays \$575.00 per month, and others pay \$575.00 and \$600.00 respectively. However, they are not paying, and have been lying to the landlord.

Rent is usually paid by half cash and half money transfers, and the landlord did not give any receipts. Up until the last few months, the roommates would pay their share to the tenant and the tenant would pay the landlord, but that became inconvenient.

Sometimes the landlord wouldn't show up on the 1st of the month, or show up, not on the 1st of the month demanding rent. Sometimes the tenant wasn't there, so he told the roommates to pay their share directly to the landlord.

The tenant tried to pay rent, but the landlord refused it. The tenant's work went down the drain, and the tenant started a business, and the tenant had a plan, and the landlord agreed. Then the landlord gave the notice to end the tenancy after telling the roommates that the tenant was staying. They said either the tenant leaves or they were leaving, and the landlord chose to collect 2 rents rather than the tenant staying. The tenant had money to pay to the landlord, but the landlord said that it would be the same problem the following month and told the tenant to just get out. That was around May 5, 2021, but around May 13, 2021 the landlord gave the tenant 2 options, and the tenant was confused. The options are contained in the text messages provided for this hearing

by the landlord, which are to pay the rent and sign a new lease or move out. The landlord didn't give the tenant a chance to pay the rent.

The roommates took off; they don't live in the rental unit anymore.

Analysis

A tenant is required to pay rent when it is due, and if the tenant fails to do so, the landlord may serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice). Once served, the tenant has 5 days to pay the rent or dispute the Notice. If the tenant pays the rent in full, the Notice is of no effect, however if the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in that Notice. The effective date of vacancy must not be sooner than 10 days after service of the Notice.

In this case, there is no dispute that the tenant didn't pay the rent, however the tenant testified that he was confused about an arrangement and offered the landlord money twice. If there was an arrangement in place agreed to by the parties, it ought to have been in writing. I am not satisfied that the landlord refused rent. I find that the landlord agreed at some point to avoid ending the tenancy, but did not agree in writing that the tenant could be late with the rent.

The tenant has provided a copy of the Notice, and I find that it is in the approved form and contains information required by the *Act*. The landlord testified that it was served on May 14, 2021 by placing it in the tenant's mailbox, which is deemed to have been served 3 days later, or May 17, 2021. I find that the effective date of vacancy according to the law is May 27, 2021. The tenant filed the Application for Dispute Resolution disputing the Notice on May 16, 2021, which is within the time, but has not paid the rent, and I see no reason to cancel it. The tenant's application is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 28, 2021

Residential Tenancy Branch