



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1284969 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MNDCT, RP, RR

Introduction

On March 23, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking a rent reduction pursuant to Section 65 of the *Act*.

The Tenant attended the hearing with L.W. attending as her advocate. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she put the Notice of Hearing and evidence package under the Landlord’s office door on or around March 24, 2021. The Landlord advised that he only received this package last Friday because he only goes to the office periodically. However, he stated that he had reviewed the contents of this package and he was prepared to proceed with the hearing regardless. Despite this package not being served in a manner in accordance with the *Act*, as the Landlord was satisfied that he was prepared and as he elected to proceed with the hearing, I am satisfied that the Landlord

was sufficiently served the Tenant's Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that he did not submit any documentary evidence for consideration as it was his understanding that it would have been too late given when he received the Notice of Hearing and evidence package. However, he declined to suggest an adjournment and he stated that he was prepared to proceed with the hearing based on the documentary evidence that the Tenant submitted.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, that her other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord did not know when the tenancy first started, as he took possession of the property in January 2021. The Tenant advised that the most current tenancy agreement was signed on July 25, 2018 with the previous owner. All parties agreed that rent was currently established at an amount of \$525.00 per month and that it was due on the first day of each month. A security deposit of \$260.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

All parties also agreed that the Notice was served by hand to L.W. on March 20, 2021 and he confirmed that he received this. The Notice indicated that \$1,575.00 was owing for rent on March 1, 2021. The effective end date of the tenancy was noted as April 1, 2021.

The Landlord advised that the Tenant was in arrears for December 2020, January 2021, and February 2021 rent. Thus, the Notice was served. However, he stated that the ministry sent \$525.00 for each month of February 2021 and March 2021 rent, but he does not know when this was done. As a result, it is his position that December 2021 and January 2021 is still in arrears.

He testified that he took over possession of the property on January 26, 2021 and he posted a notice, within three to four days, for all the residents, informing them of the Landlord's new contact information. He stated that he contacted L.W. about the Tenant's rental arrears, that he gave L.W. a form around this time to change the payment information from the old landlord, and that he contacted the ministry to update where rent cheques were to be sent. He submitted that the previous landlord provided a rent ledger to his lawyer, which confirmed the rental arrears for December 2020 and January 2021. However, the Landlord did not submit this as documentary evidence.

L.W. advised that the previous landlord came to their door prior to Christmas 2020 and informed them that the property was sold, but no other details were given. He stated that the previous landlord told him that rent was still required to be paid to him, so the Tenant paid him cash, for which a receipt was not provided. He was not sure what month this happened, though. He confirmed that for one month, the Tenant withheld

December 2020 rent without a valid reason under the *Act*, but then the Tenant settled this debt.

L.W. testified that rent was always paid by the ministry, with the exception of the one month that was paid in cash. He stated that the Tenant phoned the ministry to put rent payments on hold for December 2020 because of their desire to withhold the rent, but payments from the ministry to the previous owner were changed back in January 2021. He submitted that the Tenant's rental payments for February 2021 onwards were made by the ministry to the Landlord, but prior to that, all payments of rent went to the previous landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* then states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the Landlord has the burden to provide sufficient evidence over and above their testimony to establish the validity of the Notice.

In the case before me, while the Landlord alleges that rent for December 2020 and January 2021 had not been paid and is still in arrears, I do not find that the Landlord provided any documentary evidence to support this position. While I acknowledge that the email dated March 23, 2021, that was submitted by the Tenant as documentary evidence, confirms that the Tenant's rent was paid directly to the previous owner,

except for December 2020 and January 2021, L.W. provided testimony that these months of rent were actually paid. Even though L.W.'s testimony was not entirely consistent or reliable, it is entirely possible that these months may have been paid by the Tenant, in some capacity, to the previous owner. In addition, I do not find that the Landlord was adequately prepared for this hearing, as he could not provide clear or precise details of when rent was paid, to who, and/or when. Clearly there was some disorganization between himself and the previous owner when the property was transferred.

As the burden of proof is on the Landlord to prove the validity of the Notice, on a balance of probabilities, without a ledger or some other documentary evidence from the Landlord to prove otherwise, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy for unpaid rent.

I note that this Decision is not a determination on whether the rent for December 2020 and January 2021 was, in fact, in arrears or not. It is simply a Decision indicating that the Landlord did not sufficiently demonstrate that these rent payments went unpaid.

I emphasize this because at the conclusion of the hearing, I asked the parties if they had any questions or concerns and both parties answered in the negative. After that, I advised the parties that I would be concluding the hearing. However, as the Landlord exited the teleconference, and before I was able to disconnect as well, L.W. stated "So, did we lose?" I advised him that the parties would be provided with a copy of my Decision and the result when it was rendered.

As the Landlord was not present for this question, I note that he did not have an opportunity to respond. Furthermore, as the Landlord was not in attendance anymore, I am unable to use this submission from L.W. in formulating a conclusion in this Decision. However, I do find it curious why L.W. would even ask this question if rent had been paid for December 2020 and January 2021. Again, I have not made a determination on whether the rent was in arrears or not, but it is not clear to me why L.W. would think to ask this question if the rent for these months had been paid by the Tenant. I do not find this question to be logical or consistent with common sense or ordinary human experience. Rather, I find this to be dubious and cause for suspicion.

Regardless, as I am not satisfied that the Landlord has met this burden of proving the validity of the Notice, I find that the Notice is of no force and effect.

Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of March 20, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: July 12, 2021

Residential Tenancy Branch