



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

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; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

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 tenant was represented 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.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 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 recovery their filing fee from the landlord?

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.

This landlord assumed this periodic tenancy when they purchased the rental property in May 2021. The tenant began this tenancy with the previous landlord in October 2019. The monthly rent at the outset of the hearing was \$3,500.00 payable on the first of each month.

The tenant submits that pursuant to an agreement with the previous landlord the rent was reduced to \$3,000.00 as of May 1, 2020. A copy of the correspondence from the previous landlord recording this agreement was submitted into evidence. The document states:

By combining the BC housing COVID-19 housing subsidy, the owner agrees that the tenant pay \$3000 per month for rent for the above property.

The landlord submits that the rent is \$3,500.00 and the tenant has not paid the full amount required under the tenancy agreement. The landlord issued a 10 Day Notice dated May 2, 2021 indicating a \$500.00 arrear. The landlord testified that they are unaware of any agreement to reduce the monthly rent payable.

Analysis

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 this case, the tenant testified that they received the 10 Day Notice on May 2, 2021 and filed a notice of dispute application on May 4, 2021 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord submits that the monthly rent payable under the tenancy agreement is \$3,500.00 and the tenant has not paid the full amount required.

Based on the evidence before me I find the landlord has not met their evidentiary onus. The documentary evidence includes a clear reducing of the monthly rent from the

amount listed in the original tenancy agreement to \$3,000.00. The memorandum clearly indicates the address of the rental unit and identifies the tenant. The document is dated May 1, 2020 and does not provide that the reduction in rent is temporary or conditional. I find it clear that the monthly rent for this tenancy was reduced to the amount of \$3,000.00 payable on the first of each month.

While I accept the testimony of the landlord that they believed that monthly rent was \$3,500.00, I find this misunderstanding of the terms of this tenancy does not give rise to the right to demand an amount greater than that which was agreed to by the parties. If the landlord feels they were misinformed by the seller of the property, that may form the basis of an action against the seller but it is of no consequence to the matter at hand.

I find that the monthly rent for this tenancy was reduced to \$3,000.00. I accept that undisputed evidence of the parties that the tenant has paid that amount and therefore find no basis for the issuance of a 10 Day Notice as there is no unpaid rent. I allow the tenant's application and dismiss the 10 Day Notice of May 2, 2021. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord. I allow the tenant to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is granted. The 10 Day Notice is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 20, 2021

Residential Tenancy Branch