



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day notice to End Tenancy for Unpaid Rent or Utilities, and several other remedies including a monetary claim for \$4400.00.

Both the landlords and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not make an unofficial recording of the proceeding. I explained the hearing process to the parties and gave the parties the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing materials upon each other. The tenant testified that she sent her Application for Dispute Resolution and evidence to the landlords via registered mail on March 27, 2021. The landlords confirmed receipt of the registered mail sent to them by the tenant.

The landlords testified that they sent their evidence to the tenant via registered mail on June 25, 2021. The tenant denied receiving the registered mail from the landlords. The landlords provided the registered mail tracking number as proof of service. Upon a search of the registered mail tracking number, I noted that the registered mail was recorded as being delivered; however, the city where it was delivered was different than the city for the tenant's service address. Given this situation, I informed the parties that I was not satisfied the tenant was in receipt of the landlord's documentary evidence; however, the landlords may provide their evidence orally during the hearing and if it determined it necessary or appropriate to order re-service of evidence I would give that

further consideration during the hearing, depending on the positions taken by the parties.

The tenant confirmed that she continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 10 Day Notice and I severed the tenant's monetary claim against the landlords and other remedies requested pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

For reasons provided in this decision, I have determined the tenancy is over due to unpaid rent. As such, the other remedies sought by the tenant on her Application for Dispute Resolution but not addressed in this decision are dismissed without leave to reapply with the exception of the tenant's monetary claim. The tenant's monetary claim is dismissed with leave to reapply.

During the hearing, I determined that it was undisputed that the rent for February 2021 and March 2021 was not paid. The tenant indicated the landlord had waived entitlement to the two months of rent, initially testifying that it was waived implicitly or orally by the landlord. The landlord denied waiving entitlement to the rent. I gave the parties my preliminary findings that I was not satisfied by the disputed oral testimony that the landlord had waived entitlement to rent for two months. The tenant then stated that she had proof of the landlord's waiver sent to her boyfriend in the form of text messages from the landlords. The landlord responded that the waiver of rent communicated in text message was in anticipation the tenant would be vacating the rental unit in April 2021. Neither party had included the subject text messages in their evidence packages that were submitted to the Residential Tenancy Branch.

I heard the text messages were written in Mandarin. Since I was of the view that the text messages were likely critical evidence, I ordered both parties to provide me with the relevant text message exchange(s) and have it translated into English by a certified translator. I expressly prohibited the submission of any other evidence. I also ordered the parties to serve their text message evidence to the other party. Serving the other party by email was chosen and the parties orally provided their email address to the other party before the hearing ended. The tenants requested one full week to provide the evidence and I granted their request in setting a deadline of July 19, 2021 to submit the evidence.

On July 18, 2021 the tenant provided an additional upload to the Residential Tenancy Branch; however, there are no text messages included in the submission, or evidence it was emailed to the landlords. Rather, the tenant's submission appears to be a timeline as to the renovation schedule in response to the water leak, and her position concerning a car accident and being defrauded by ICBC and the landlord. I have not given further consideration to this additional submission by the tenant as it does not pertain to the alleged waiver of rent by the landlord in text messages and it is not what I had authorized and ordered the parties to provide me.

The landlords uploaded 45 pages of additional evidence on July 12, 2021, that included 22 pages of "WeChat" communications in Mandarin, which were then translated into 22 pages of text messages in English and a declaration by the translator that she is a certified translator for Mandarin to English. I find this evidence is consistent with what I had authorized and ordered the parties to provide me during the hearing. The landlord provided evidence that two attempts were made to send the additional evidence to the tenant via email on July 18, 2021 but the emails were not successfully delivered with the error message that the email address was not found. The landlord provided further evidence on July 20, 2021 that the correct email address for the tenant was determined and the evidence was sent to the tenant on July 20, 2021 using the correct email address. I have compared the email address the landlord attempted to use for service on July 18, 2021 and I note they appear to be a reasonable attempt to send the evidence to the tenant. I note the email address the landlord used on July 20, 2021 is consistent with the tenant's email address on record with the Residential Tenancy Branch. As such, I find I am satisfied the landlords provided the tenant with a copy of the additional evidence. As it was the tenant who alleged the landlord had waived entitlement to two months of rent in text messages, I have admitted the landlord's additional evidence with a view to determining whether there was a waiver out of an abundance of fairness to the tenant.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?
2. Are the landlords entitled to an Order of Possession for unpaid rent?
3. Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy started August 1, 2021 and the tenant paid a security deposit of \$1100.00 and a pet damage deposit of \$1100.00. The monthly rent was set at \$2200.00 payable on the first day of every month.

It is undisputed that the tenant did not pay rent for February 2021 or March 2021. On March 20, 2021 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$4400.00 was outstanding as of March 1, 2021 and has a stated effective date of April 1, 2021. The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

In filing to dispute the 10 Day Notice, the tenant indicates on her Application for Dispute Resolution that the 10 Day Notice is being disputed because:

"The landlords are not in good faith with RTB. Their alleged amount of \$4400 owed rent is just the excuse to hide their irrationality to perform the eviction, and it contradicts their earlier statements. The fact is, I refused their abrupt proposal to vacate this unit by March 31 for real estates sales. Seeking for higher financial gain regardless of what others think or feel is inhumane. I've been very restricted in socializing and I'm not gonna sacrifice myself or get extra troubles in moving"

In providing proof that rent is not owed, the tenant provided evidence concerning a water leak and wrote:

"There was a 2-month rent reduction to cover my cost and compensation for repairs from Dec to Feb, written request was made and agreed. Now the denial is nothing but an excuse for own monetary gain."

During the hearing, I asked the tenant how the landlord agreed to the two month rent reduction she described. The tenant testified that she had written a request for the reduction or compensation to the landlord and when the landlords came to the rental unit they did not indicate any objection to the request so the tenant took the landlord's lack of objection to mean the landlords agreed. The tenant did not know the date the landlords visited her at the rental unit.

As for then issuing a 10 Day Notice despite the landlord's alleged agreement for a two month rent abatement, the tenant stated that the landlords did so because the tenant has a lawsuit against ICBC and the landlord's classmate works for ICBC. The tenant indicated that she believes the landlords are involved in ICBC's attempt to put financial pressure on her and have her not pursue her lawsuit against ICBC.

The landlord acknowledged receiving the tenants request for compensation concerning the water leak on March 17, 2021 but the landlord responded in a text message on March 19, 2021 that she refused the tenant's request. The landlord was of the position the landlord did not authorize the tenant to withhold two months of rent for the water leak in writing or orally since it was a relatively small leak. When the landlord went to the rental unit there was a conversation concerning mail and ICBC but nothing about rent as they had not yet received the tenant's request for a rent reduction when they went to the rental unit.

The landlord denied any involvement with ICBC and the tenant's lawsuit against. The landlord stated she has a friend who works for ICBC but ICBC has rules and regulations it follows with respect to legal cases and the landlord has nothing to do with the organization.

I informed the parties that I was unsatisfied the landlord had waived the rent due to a water leak, orally or implicitly, based on the disputed oral testimony, or that the landlord is in cahoots with ICBC in a campaign to put pressure on the tenant to drop her lawsuit against ICBC. The tenant then stated that ICBC and the Residential Tenancy Branch are also known to work together against claimants to which I assured the tenant that I was not under any influence by ICBC. At that point the tenant stated her boyfriend has a message from the landlord agreeing to waive two months of rent. The landlord responded that waiving two months of rent was offered in anticipation the tenant would move out of the rental unit in April 2021. I instructed the tenant to find the text message and read it aloud. The tenant's boyfriend could then be heard speaking loudly and distracting the tenant. The tenant was apparently having difficulty locating the

appropriate text message on her boyfriend's phone. Accordingly, as described previously in this decision, I ordered both parties to provide me with the relevant text message exchanges regarding waiver of rent, translated into English by a certified translator, on later than July 19, 2021.

As for subsequent months, I heard consistent testimony that the tenant paid rent for April 2021, May 2021, June 2021 and paid the rent for July 2021 with the exception of \$100.00. As for the \$100.00 withheld in July 2021, the tenant explained she made this deduction on her own volition to recover the filing fee she paid for her Application for Dispute Resolution.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent or paying an unlawful rent increase, authorization has been given by the landlord or an Arbitrator, or where the tenant has expended money to make emergency repairs under section 33 of the Act.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. In this case, the tenant did not pay the outstanding rent, but did file to dispute the 10 Day Notice. The tenant acknowledged that she did not pay rent for two months and I proceed to consider whether the tenant had the legal right to withhold rent.

The tenant indicated that she withheld rent due to a water leak; however, damage to the rental unit, loss of use or enjoyment of the rental unit, or the need for repairs does not in itself entitle a tenant to withhold rent. Rather, the right to withhold rent in these circumstances must be authorized by the landlord or an Arbitrator. The tenant did not have authorization from an Arbitrator to withhold rent. However, the tenant asserts the landlord authorized the tenant to withhold rent as compensation for the water leak.

The landlord denied that the tenant was given authorization to withhold rent for February 2021 and March 2021 due to a water leak.

The tenant initially testified that the authorization was given orally or implicitly after she sent a written request to the landlord for compensation due to a water leak. The tenant's testimony was that when the landlord came to the rental unit the landlord did not express any objection to the tenant's written request. The landlord testified that when the landlord went to the rental unit they spoke of mail and ICBC but not of rent because they had not received the written request yet. Rather, the landlord submitted that the tenant's written request was not received until March 17, 2021 even though the letter was dated in February 2021 and upon receiving the written request the landlord responded in a text message on March 19, 2021 that she was refusing the tenant's request. I note that in the translated text messages is an image of the tenant's written request for compensation and I see that it was received by the landlord via "WeChat" on March 18, 2021. I find the tenant's position that the landlord's lack of objection to her request for compensation during a visit to the rental unit to constitute a waiver of rent is not persuasive considering the following factors:

- The tenant was uncertain as to when the landlords visited the rental unit and I am unsatisfied the landlords had received the written request prior to the visit.
- The request for compensation was not raised as an issue by either party during the visit.
- There is documentary evidence before me that the written request was received by the landlord on March 18, 2021 and the tenant's request was refused by the landlord on March 19, 2021.

As for the tenant's position that the landlord agreed to waive the rent in text messages, I have reviewed the exchange of "WeChat" text messages provided by the landlords since the tenant did not provide me with any text messages pointing to a waiver.

As I described previously, there are 22 pages of text messages before me. The first date I can see is March 8, 2021. I do not attempt to reproduce the text messages but I proceed to summarize the essential content of the messages, as described below:

The tenant's boyfriend indicates they owe the rent and that he has \$20,000 but they may need that money for a lawyer. The landlords provide varying responses indicating they need the money but also to use the money to pay the lawyer. The landlords inform the tenant's boyfriend they are going to sell the rental unit and they need to arrange for a renovation before they list it. The tenant's boyfriend indicates they will not "short change" the landlords and "we will move out ASAP". The landlords suggest the tenant could move out early April and to pay the rent later or if they do not have enough money to "just forget it". The landlords then indicate they have signed a listing contract and are

arranging to have renovations performed at the beginning of April 2021 followed by the landlord's attempt to confirm when to set the renovation schedule. The tenant's boyfriend informs the landlord that moving out in April 2021 seems too rushed and offers to pay the rent. The landlord suggests the money go to their legal fees and that receiving the rent is not an issue. The landlord states that if moving out by April 2021 is too rushed that is "ok" and she will look into serving the appropriate notice to the tenant after speaking with BC Housing. The tenant sends the tenant's request for compensation for the water leak to the landlords and it is received on March 18, 2021. After that, all of the communications are from the landlords and there are no more messages from the tenant or tenant's boyfriend. The landlord indicates they disagree with the events concerning the water leak and appear to believe the tenant is looking for compensation for two additional months, back to December 2020, to which the landlord refuses. The landlord goes on to indicated they were not expecting the tenant to pay for two months of rent but also expected the tenant would be moving out in April 2021.

In considering of all of the text messages, I find I prefer the landlord's interpretation of the "waiver" of rent over that of the tenant. It would appear to me that the landlord was communicating to the tenant's boyfriend that the two months of rent that were not paid would be waived after the tenant's boyfriend stated they would be moving out and the landlord's belief the tenant would move out in April 2021 and the landlord's anticipation that they may proceed to renovate the unit in April and then sell it. Yet, the tenant has not moved out of the rental unit and did not pay the outstanding rent.

It appears to me that the tenant was of the view that she is entitled to compensation equivalent to two months rent due to a water leak based on the submissions with her Application for Dispute Resolution and statements she made during the hearing; however, as I stated previously, having a water leak or being in the need of repairs or suffered a loss of use and enjoyment are not in themselves a basis for withholding rent and I am unsatisfied the tenant had the landlord's authorization to withhold two months of rent due to the water leak, repairs or loss of use and enjoyment. Nor, did the tenant have the authorization from an Arbitrator to do so. Also of consideration, is the tenant also withheld \$100.00 from rent paid for July 2021 under what appears to be a mistaken belief by the tenant that she has the right to decide what monies she may withhold from rent even though she does not have authorization to do so. Therefore, I find I am unsatisfied the tenant had the legal right to withhold rent for February 2021 and March 2021 due to a water leak and I find the landlord's offer to waive two month's of rent was made in anticipation the tenant would be moving out in April 2021 which has not happened.

In light of the above, I uphold the 10 Day Notice and I dismiss the tenant's request that I cancel it.

Section 55(1) and (1.1) of the Act provides as follows:

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Upon review of the 10 Day Notice provided to me by the tenant, I am satisfied that it meets the form and content requirements of section 52 of the Act and having upheld the 10 Day Notice, I find the criteria of section 55(1) have been met and the landlords are entitled to an Order of Possession. During the hearing, the landlord was agreeable to an Order of Possession effective on July 31, 2021 and I provide such an order to the landlords.

In keeping with section 55(1.1), I further provide the landlords with a Monetary Order for the unpaid rent of \$4400.00 for February 2021 and March 2021 plus the \$100.00 the tenant withheld from July 2021 for a Monetary Order in the sum of \$4500.00.

The tenant's security deposit and pet damage deposit remain in trust for the tenant to be administered in accordance with section 38 of the Act.

Conclusion

The 10 Day Notice is upheld and the tenant's application to cancel the 10 Day Notice dated March 20, 2021 is dismissed. In keeping with sections 55(1) and (1.1) the landlords are provided an Order of Possession effective on July 31, 2021 and a

Monetary Order in the sum of \$4500.00 for unpaid and/or loss of rent up to and including the month of July 2021.

The tenant's monetary claim against the landlords is dismissed with leave to reapply.

The other remedies sought by the tenant are dismissed without leave to reapply.

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 21, 2021

Residential Tenancy Branch