



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR LRE MNDCT FFT

Introduction

The tenant applied for various relief under the *Residential Tenancy Act* (“Act”), including an application for an order cancelling a 10 Day Notice to End Tenancy for Cause (the “Notice”).

Both parties, including legal counsel for the landlord, attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. It is noted that the tenant did not submit any documentary evidence; he briefly explained that his laptop computer had crashed, and he was therefore unable to prepare any evidence to ultimately submit in preparation for this matter.

Preliminary Matter – Severing and Dismissal of Unrelated Issues

Rule 2.3 of the *Rules of Procedure* states that “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.”

The tenant’s claims related to compensation, and, for an order restricting or limiting the landlord’s right to enter the rental unit, are unrelated to the central and most important claim: will the tenancy continue?

As such, the tenant’s claims for compensation and for an order restricting the landlord’s rights to enter the rental unit are dismissed, with leave to reapply.

In respect of the tenant’s application to dispute a One Month Notice to End Tenancy for Cause, there is no copy of any such notice to end tenancy on the file or in evidence. As such, this aspect of the tenant’s application is dismissed, with leave to reapply.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 17, 2014. Monthly rent, which is due on the first day of the month, is \$1,200.00. There is no security or pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

Landlord's counsel made the following submissions, which were confirmed by the landlord:

The tenant failed to pay rent in the amount of \$1,200.00 on July 1, 2021. Subsequently, the landlord issued and served the Notice on the tenant on July 5, 2021. The Notice, a copy of which is in evidence, reflects the amount owing and due on July 1. There is also in evidence a copy of a Proof of Service document. To date, the landlord testified, the tenant has not paid the \$1,200.00.

The tenant paid \$800.00 in rent for August, and then full monthly rent for September and October. For the months of August, September, and October, the landlord issued receipts for the rent on a "use and occupancy" basis.

It is the landlord's request that the tenant's application be dismissed, that the landlord be granted an order of possession, and that they also be granted a monetary order in the amount of \$1,600.00 for the unpaid rent for July, and the unpaid rent from August.

The tenant testified about various matters unrelated to the Notice. I will only reproduce those aspects of the tenant's testimony as it relates to the alleged non-payment of rent. The tenant testified that he asked the landlord if it was okay if something could be done about the rent for July.

He explained that his 6-year-old purebred German Sheperd – his "best friend" – inexplicably died and that it cost him a lot of money to bury the dog. As such, his financial situation was not particularly good when it came time to pay the rent for July.

The tenant reiterated that he negotiated with the landlord to not pay the rent for July. He also explained that while he understood that rent needs to be paid, he simply could not pay it for July. Further, he testified that he has paid every single rent payment on time since 2014. And, for the landlord to now issue the Notice is “uncalled for, and not cool.”

In rebuttal, landlord’s counsel submitted that there are no written witness statements or any other evidence to support the tenant’s claim that the landlord acquiesced to the tenant not paying rent for July.

In rebuttal, the tenant remarked that he “had no problem” paying the \$400.00 in rent arrears for August, and that he cannot be said to be “dodging her.” However, for her to issue the Notice is simply “heartless.”

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on July 1, 2021, and subsequently did not pay the full rent for August 2021. There is no evidence before me to find that the tenant had any right under the Act not to pay the rent. And, despite the tenant’s claim that the landlord was somehow okay with him not paying rent for July, the landlord disputes this argument, and there is no evidence to support the tenant’s claim.

While I empathize with the tenant’s experience of losing his dog, his best friend as it were, difficult financial circumstances do not provide for an exception to having to pay rent. Landlords are entitled to rent being paid in full and on time, every time.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was given. Accordingly, the tenant’s application for an order cancelling the Notice is dismissed. Further, the tenant’s application for recovery of the filing fee is dismissed.

Pursuant to sections 46 and 55 of the Act, then, having dismissed the tenant's application, and having found that the Notice complies with section 52 of the Act as to form and required content, the landlord is granted an order of possession of the rental unit. A copy of this order of possession is issued in conjunction with this decision, to the landlord.

Pursuant to section 55(1.1) of the Act, the landlord is granted a monetary order in the amount of \$1,600.00 for the unpaid rent. A copy of this monetary order is also issued in conjunction with this decision, to the landlord.

Conclusion

I HEREBY:

1. DISMISS the tenant's application, without leave to reapply;
2. GRANT the landlord an order of possession, which must be served on the tenant, and which is effective two (2) days from the date of service. This order may be enforced in the Supreme Court of British Columbia; and,
3. GRANT the landlord a monetary order in the amount of \$1,600.00, which must be served on the tenant. If the tenant fails to pay the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under Section 9.1(1) of the Act.

Dated: October 26, 2021

Residential Tenancy Branch