



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, MNR-DR, CNR, LRE, PSF, OLC, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 21, 2021 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in July of 2021 was posted on the door of the rental unit. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order suspending or setting limits on the Landlord's right to enter the rental unit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for an Order requiring the Landlord to provide services or facilities.

The Tenant stated that sometime in July of 2021 she personally served the Landlord with the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in July of 2021. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On November 03, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the door of the rental unit on November 03, 2021. The Tenant stated that she received this evidence on November 03, 2021 and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified issues in dispute on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute is possession of the rental unit and I will, therefore, only consider issues related to the Landlord's attempt to end the tenancy, which include:

- the Landlord's application for an Order of Possession;
- the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid;
- the Landlord's application for unpaid rent;
- the Tenant's application for an Order suspending or setting conditions on the Landlord's right to enter the unit; and
- the application to recover the filing fee.

Any other issues are dismissed, with leave to re-apply.

Preliminary Matter #2

The Landlord's Application for Dispute Resolution is amended to include an application for all unpaid rent that is currently due.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is the Landlord entitled to an Order of Possession and/or a monetary Order for unpaid rent?

Is there a need to issue an Order suspending or setting limits on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 01, 2020;
- the Tenant agreed to pay monthly rent of \$2,000.00 by the first day of each month;
- in September of 2020 they agreed that the rent could be paid at any time during the month, provided it was paid in full by the end of each month;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on July 09, 2021, which declared that the rental unit must be vacated by July 19, 2021;
- a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant in September of 2021, which declares that the Tenant must vacate the unit by November 30, 2021.

The Landlord stated that on July 09, 2021 the Tenant still owed \$1,800.00 in rent for July of 2021. The Tenant stated that on July 09, 2021 she still owed \$1,700.00 in rent.

The Landlord stated that:

- on July 14, 2021 the Tenant paid \$500.00 in rent;
- on July 16, 2021 the Tenant paid another \$500.00 in rent;
- on July 19, 2021 the Tenant paid another \$400.00 in rent;
- leaving unpaid rent of \$400.00 for July of 2021;
- \$1,000.00 in rent was paid for August of 2021;
- \$500.00 in rent was paid for September of 2021; and
- No rent was paid for October or November of 2021.

The Tenant stated that:

- on July 14, 2021 she paid \$500.00 in rent;
- on July 16, 2021 she paid another \$500.00 in rent;

- on July 18, 2021 she paid another \$300.00 in rent;
- on July 19, 2021 she paid another \$400.00 in rent;
- leaving no unpaid rent for July of 2021;
- \$1,000.00 in rent was paid for August of 2021;
- \$500.00 in rent was paid for September of 2021;
- No rent was paid for October or November of 2021; and
- She does not need to pay rent for November of 2021, as she is entitled to one month's free rent due to being served with a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that she submitted documents to show that she paid \$300.00 in rent on July 18, 2021. The Landlord stated that she submitted evidence of all of the payments made by the Tenant since July 01, 2021. She stated that she did not submit a copy of a payment made on July 18, 2021, as a payment was not made on that date.

The Tenant is seeking an Order requiring the Landlord to comply with the *Act* if she wishes to enter the rental unit. The Tenant alleges that the Landlord has entered the rental unit without authority during the tenancy, which the Landlord denies.

During the hearing the Landlord and the Tenant agreed that the Tenant's security deposit of \$1,000.00 could be applied to outstanding rent owed by the Tenant.

At the conclusion of the hearing the Tenant stated that she has witnesses, but these witnesses do not have evidence that is relevant to the claim of unpaid rent and/or the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, other than they have seen the documents that have been submitted in evidence by the Tenant. As these witnesses do not have evidence that is particularly relevant to the issues in dispute at these proceedings, the Tenant stated that she did not feel the need to call them as witness.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,000.00.

On the basis of the undisputed evidence, I find that in September of 2020 the parties agreed that the rent could be paid at any time during the month, provided it was paid in full by the end of each month. I therefore find that rent for July of 2021 was due, in full,

by July 31, 2021. On the basis of the testimony of both parties, I find that by July 09, 2021, the Tenant had not paid all of the rent that was due for July of 2021.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on July 09, 2021. As rent for July was not due until July 31, 2021, I find that the Landlord should not have served this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities until after July 31, 2021.

As the Landlord did not have the right to end this tenancy when the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served on July 09, 2021, I dismiss the Landlord's application for an Order of Possession and I grant the Tenant's application to cancel this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

I favour the testimony of the Tenant, who stated that on July 09, 2021, rent of \$1,700.00 was owed over the testimony of the Landlord, who declared rent of \$1,800.00 was due on that date. In reaching this conclusion I was heavily influenced by the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities which was submitted in evidence, which clearly shows rent of \$1,700.00 was overdue. I note that the Landlord also provided a handwritten ledger that shows rent of \$1,800.00 was due on July 02, 2021, however I find that this is not a legal document and that it carries less weight than the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

On the basis of the undisputed evidence, I find that on July 14, 2021 the Tenant paid \$500.00 in rent and that on July 16, 2021 she paid another \$500.00 in rent, leaving a balance owing of \$700.00 for July of 2021.

On the basis of the undisputed evidence, I find that on July 19, 2021 the Tenant paid \$400.00 in rent, leaving a balance owing of \$300.00 for July of 2021.

I find that the Tenant submitted insufficient evidence to corroborate her testimony that she paid \$300.00 in rent on July 18, 2021 or that refutes the Landlord's testimony that no further rent was paid for July of 2021. In reaching this conclusion, I was heavily influenced by the fact evidence of e-transfers from July 02, 16, and 19 were submitted in evidence, however no such evidence of a July 18th payment was submitted in evidence. In addition, the Landlord submitted a bank statement from July of 2021,

which does not reflect a payment on July 18, 2021. I therefore find that the Tenant still owes \$300.00 in rent for July of 2021, which must be paid to the Landlord.

I note that I was unable to find any evidence of an e-transfer of \$300.00 in July of 2021. The Tenant submitted evidence of an undated e-transfer of \$400.00. In the notes of this e-transfer the Tenant declares that all rent has been paid for July of 2021. I find that this note has little evidentiary value, as this is simply a note that the Tenant attached to the e-transfer.

On the basis of the undisputed evidence, I find that the Tenant only paid \$1,000.00 in rent for August of 2021. I therefore find that the Tenant still owes \$1,000.00 in rent for August of 2021, which must be paid to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant only paid \$500.00 in rent for September of 2021. I therefore find that the Tenant still owes \$1,500.00 in rent for September of 2021, which must be paid to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant paid no rent for October of 2021. I therefore find that the Tenant still owes \$2,000.00 in rent for October of 2021, which must be paid to the Landlord.

On the basis of the undisputed evidence, I find that a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant in September of 2021, which was served pursuant to section 49 of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant received a Two Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*, I find that the Tenant is not obligated to pay rent for November of 2021.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

For the remainder of the tenancy, I remind the Landlord of her obligation to comply with section of the 29 of the *Act*, which reads:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The Landlord's application for an Order of Possession is dismissed.

The Tenant's application to cancel this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is granted.

The Landlord has established a monetary claim, in the amount of \$4,900.00, which includes \$4,800.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. As the parties agreed during the hearing that the Landlord could retain the Tenant's security deposit of \$1,000.00, I find that the Landlord has the right to retain the security deposit in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,900.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 15, 2021

Residential Tenancy Branch