



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001)
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated October 25, 2021 ("One Month Notice"); to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 4, 2021 ("10 Day Notice"); and to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, A.O. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Hearing documents and the Tenant's evidentiary submissions. The Tenant said that he emailed his Notice of Hearing documents to the Landlord on November 24, 2021, by email. This was the day that he received the Notice of Hearing package from the RTB. The Agent said that she received the Tenant's Notice of Hearing documents, however she did not receive any of the evidentiary submissions that the Tenant submitted to the RTB.

As a result, and pursuant to the Rules 3.1, 3.5, and 3.14, I advised the Parties that I would not consider the Tenant's documentary evidence, as he failed to serve it to the Landlord prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement and the 10 Day Notice. The Agent advised me that she represents the property management company, which represents the owner of the residential property. As a result, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Prior to their testifying, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel an eviction notice issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2020, with a monthly rent of \$2,300.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,150.00, and no pet damage deposit. The Landlord confirmed that he still holds the security deposit in full.

No one submitted a copy of the One Month Notice; therefore, I was unable to review it for form and content, pursuant to section 52 of the Act. Accordingly, I find that the One Month Notice is cancelled and is void and unenforceable.

The Tenant and the Landlord submitted copies of the 10 Day Notice. The Parties agreed that the 10 Day Notice was signed and dated November 4, 2021, that it has the rental unit address, and that it was served via email on November 4, 2021. It has an effective vacancy date of November 16, 2021, which is automatically corrected by the Act to November 17, 2021. The Landlord's ground for serving the 10 Day Notice was that the Tenant failed to pay the Landlord \$2,300.00 when it was due on November 1, 2021.

The Tenant completed his application for dispute resolution on November 24, 2021; as such, I find that the Tenant applied for dispute resolution on November 24, 2021.

In the hearing, the Landlord said:

We offered him to stay and keep the pet, but he is still in arrears for rent. I am working for ... I have worked to try to help him understand that he has to pay his rent. I reminded him that he didn't actually file for dispute resolution; I helped him do that.

I just need you to pay your rent. December's rent has not been paid, either. I want him to know, if I get an order of possession, I have to act on it, so just pay your rent and your pet deposit. I've done all the required steps – I'm doing this for a living. But I gave him so many opportunities to fix this.

[The Tenant's] gone through a really hard time, He got attacked and was seriously injured.

The Tenant said:

At the beginning of the month, I got Covid, and two weeks later I was viciously attacked by a homeless man with a bat in the ... cracked ribs, 14 staples in the back of my head; it was a random attack.

The Tenant said that he had a serious concussion from the attack and that he has had a difficult time managing since then. I asked the Tenant if he paid his rent in November, and he said:

I paid it for November in December. We were in conversation as to how to catch up with arrears. I sent a doctor's note, I wasn't able to do anything for a month and a half.

We were in conversations; she was trying to help; she said 'pay your rent for December'. On December 4, I forwarded her the rent for November. Recently, she said 'You can keep the dog, but you have to pay the dog deposit and pay your rent'. I said I'd give an extra \$1,150.00 on top of the rent. She thought [the owners] would be agreeable to that.

I sent in the text message, but on the 27th they responded, and it seems they aren't happy. 'You have to pay the rent right this second'. I thought it was okay to do a payment plan

The Agent said:

What I had discussed is that I would ask the owners if it was acceptable. I asked if they would be okay for the payment plan, but just for the dog deposit. I said you have to pay your rent. I was hoping we could resolve it before we go to arbitration.

It's not the owner's responsibility to let a person stay in a property without paying rent. I'm understanding, but I never said you can have a payment plan for the outstanding rent. I can't continue to do my job for the owner and protect someone that isn't willing to pay the rent.

The Tenant said:

I'm willing to pay the rent and the \$1,150.00 on top of the rent for three months. She said I'm sure they'd agree to that . . . I took it that from that I could do an \$1,150.00 payment plan on top of that.

I'm back at work. I wasn't working for all of August, but I started back at work in September.

I asked the Tenant when he could pay December's rent and he said: "If I had to, I would try to get the money together as soon as I can. If they're not willing to do a payment plan." The Tenant said he has saved money to pay January's rent and the payment plan amount. I suggested that the Tenant would be better to pay his rent for December, as the Landlord had not approved a payment plan for the rent arrears.

The Agent said:

I've been struggling to get this payment plan for the pet deposit. I followed up

with him and I've let him know – you need to pay rent to stay in the property. I still don't have rent for December. The payment for November in December was for use and occupancy only.

He currently owes \$2,300.00 for December rent, plus \$1,150.00 for the pet damage deposit

I feel I'm trying my best for [the Tenant] to help him through this difficult time. But I'm having an owner to answer to. We're on our second 10 Day Notice. I reminded him to send in his dispute resolution application. We had a text conversation; he screen shouted the text conversation; he apologized and said, 'I've been attacked'. I do not want his family to be out. Pay your rent. I would like [the Tenant] to hear that I am trying my best. I want him to pay his rent and I want him and his family to have a home.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. .

[emphasis added]

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on November 7, 2021, three days after it was emailed to the Tenant.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. I find the Tenant did not provide any evidence of having a right under the Act to deduct any rent owing to the Landlord under the tenancy agreement. Rather, I find from the evidence before me, that the Tenant owes the Landlord \$2,300.00 in unpaid rent as of December 4, 2021, when he paid for November's rent, but had yet to pay for December 2021.

The 10 Day Notice was signed, dated, it had the rental unit address and the effective vacancy date corrected to November 17, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act. I find that the Tenant failed to pay his rent or apply for dispute resolution within five days of having received the 10 Day Notice. Accordingly, I dismiss the Tenant's Application to cancel the 10 Day Notice. Rather, I find that the Landlord provided sufficient evidence on a balance of probabilities to establish the validity of the 10 Day Notice. I find that it is valid and enforceable under the Act. I dismiss the Tenant's claim to cancel the 10 Day Notice without leave to reapply.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a

tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

I find that the Landlord is eligible for a monetary award of \$2,300.00, pursuant sections 26, 46, and 55 (1.1). I, therefore, award the Landlord with **\$2,300.00** from the Tenant for the outstanding rent for December 2021, pursuant to 67 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$1,150.00 security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's \$1,150.00 security deposit; I grant the Landlord a **Monetary Order** of **\$1,150.00** for the outstanding award amount owing to the Landlord by the Tenant.

Further, I award the Landlord with an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for December 2021, the **Order of Possession** will be **effective two days after service of the Order** on the Tenant.

The Tenant's Application is dismissed wholly without leave to reapply.

Conclusion

The Tenant was unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the 10 Day Notice and that the Tenant owes the Landlord \$2,300.00 in rent for December 2021. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the Landlord to retain the Tenant's \$1,150.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a **Monetary Order** pursuant to section 67 of the Act for the balance owing by the Tenant to the Landlord of **\$1,150.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 31, 2021

Residential Tenancy Branch