



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding International Business Travelers Hostel
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, PSF
 OPR, MNRL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order reducing rent for repairs, services or facilities agreed upon but not provided; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, which was adjourned to this date from October 7, 2021 at the request of an agent for the landlord. An Interim Decision was provided to the parties by email, along with notice of this hearing date. The Interim Decision also states that no further evidence would be permitted, nor additional cross-applications or amendments. The landlord indicated that he did not receive the Interim Decision or the notice of this hearing and learned of it last Friday in another hearing. Also, during the course of the hearing the landlord indicated that further evidence had been provided on February 11, 2022. Since the Interim Decision states that no additional evidence would be permitted, I decline to consider the February 11, 2022 evidence.

The parties agreed that all other evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

The Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the tenant's applications for an order

reducing rent for repairs, services or facilities agreed upon but not provided; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law, are not related to the primary application regarding the payment of rent, and I dismiss those applications with leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2021 was given in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began in 2016 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$502.00 is payable on the 1st day of each month. No security deposit or pet damage deposit were collected by the landlord. The rental unit is a single occupancy room.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$571.02, and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) with a witness present, but does not recall the date it was served. A copy of the Notice has been provided as evidence for this hearing and it is dated June 4, 2021 and contains an effective date of vacancy of June 15, 2021. The reason for issuing it states that the tenant failed to pay rent in the amount of \$502.00 that was due on June 1, 2021. The tenant paid a portion of the rent for June, 2021 but not the entire amount. The landlord does not know how much the tenant paid in June, 2021 but was short \$25.00 for loss of cable and more than \$8.00 for toilet paper.

On the first day of each month the tenant pays rent but in a different amount each month, sometimes \$486.00. The tenant pays the rent by placing a cheque in the landlord's mailbox. Therefore, the landlord did not give a receipt or any other written documentation indicating that the rent is being received for use and occupancy and does not serve to reinstate the tenancy.

The tenant testified that at the end of May or June 1, 2021 the tenant paid \$406.00, which is \$502.00, less \$8.00 for toilet paper, which was previously provided by the landlord.

As for the landlord's testimony that different amounts of rent have been paid each month, the tenant testified that that is not true. The tenant took off \$8.00 per month and in mid-June the landlord put up a sign about removing cable and a reduction of \$25.00, which the tenant also deducted from the rent.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the landlord was not able to provide a date that the Notice was served. That is important, because a tenant must pay the rent or dispute the Notice within 5 days after service or deemed service. The tenant filed the Application for Dispute Resolution on June 9, 2021 and the Notice is dated June 4, 2021, which is 5 days, and therefore I find that the tenant has filed the dispute within 5 days as required.

The landlord also testified that the tenant has continually paid some rent, although not all of it each month, but the landlord has not provided the tenant with any written or verbal notice that the rent is accepted for use and occupancy only and does not serve to reinstate the tenancy.

The Notice also states that the tenant failed to pay rent in the amount of \$502.00 that was due on June 1, 2021, however the tenant paid a large portion of that. I accept the undisputed testimony of the tenant that the sum of \$406.00 was paid, which left a balance of \$96.00 outstanding for June.

Since there are inaccuracies and miscalculations in the Notice, I cancel it and the tenancy continues.

However, the *Residential Tenancy Act* specifies that a tenant must pay the rent in full when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. I accept the undisputed testimony of the landlord that the tenant currently owes rent in the amount of \$571.02, and I grant a monetary order in favour of the landlord in that amount. If rent remains unpaid, the landlord is at liberty to serve another Notice to end the tenancy.

Since the landlord has been partially successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord in the amount of \$671.02. The landlord must serve the order upon the tenant, and may file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed with leave to reapply.

The tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed with leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$671.02.

This order is final and binding and may be enforced.

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: February 14, 2022

Residential Tenancy Branch