



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE, PSF, AAT, LAT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and several orders against the landlord.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and her agent.

The tenant submitted that he had served the Notice of Hearing documents to the landlord on December 7, 2021 via registered mail and that he served his evidence to the landlord approximately 10 days before the hearing personally. The landlord testified that she had not received any evidence from the tenant.

The relevant evidence submitted by the tenant included copies of two of the 10 Day Notices to End Tenancy for Unpaid Rent received by the tenant. As such, I advised both parties that I would consider these as they were issued by the landlord and she should have copies of them. I note the other evidence submitted by the tenant did not relate to the issues of the 10 Day Notices and as such, I have not considered them as they pertain to the issues I have noted below will not be heard at today's hearing.

I note that from the beginning of the hearing, the landlord was obviously very upset about the circumstances that had led to this hearing and this dispute. However, she manifested this by not listening to my direction and asserting that she felt like she was a criminal and that she was only trying to end this tenancy.

At one point, she began crying and stating that she was having a heart attack. I asked her agent if he was physically with her and if so that he should attend to her and see if she needed medical attention. She did calm down, somewhat, but I ordered her agent to speak on her behalf and I continued the address all issued through him for the remainder of the hearing.

I note that because this is an Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy for unpaid rent, issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue to the landlord a

monetary order for the amount of unpaid rent and an order of possession if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenant's claim to have the landlord comply with the Act, regulation, or tenancy agreement; for compensation; to suspend or set conditions on the landlord's right to enter the rental unit; to have the landlord provide services or facilities required by the tenancy agreement or law; to allow the tenant and their guests access to the rental unit; or to change the locks to the rental unit. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claims to have the landlord comply with the Act, regulation, or tenancy agreement; for compensation; to suspend or set conditions on the landlord's right to enter the rental unit; to have the landlord provide services or facilities required by the tenancy agreement or law; to allow the tenant and their guests access to the rental unit; or to change the locks to the rental unit. I grant the tenant leave to re-apply for his other claims.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 26 and 46 of the *Act*.

Should the tenant fail to succeed in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent it must be determined if the landlord is entitled to a monetary order and to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The landlord submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the parties on October 1, 2021 for a month to month tenancy beginning on October 1, 2021 for a monthly rent of \$900.00 with a security deposit held. The agreement stipulates rent is due on the first day of the monthly rental period;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 25, 2021 with an effective date of December 1, 2021 citing unpaid rent in the amount of \$450.00 due on November 15, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on December 18, 2021 with an effective date of December 1, 2021 citing unpaid rent in the amount of \$450.00 due on December 15, 2021; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 26, 2022 with an effective date of January 31, 2022 citing unpaid rent in the amount of \$1,350.00 due on January 1, 2021.

The landlord testified that the tenant failed to pay rent in the full amount for the month of November 2021, specifically, he did not pay \$450.00. The landlord submitted that as a result, they issued the first 10 Day Notice to End Tenancy. The landlord also provided that the tenant then paid December 2021 rent in full but did not pay the November arrears, so they issued the second Notice to End Tenancy.

The landlord also provided that the tenant had failed to pay rent for the months of January, February, and March 2022. After the tenant failed to pay rent for the month of January the landlord issued the third Notice to End Tenancy. The landlord submitted receipts she issued for full rent for the months of October and December 2021 and for three partial payments for the month of November totalling \$450.00.

The tenant submitted that he withheld \$450.00 from his rent payment believing that it was paid in full because he had to stay elsewhere due to a water issue during the month and that the landlord had failed to make some repairs that were required. The tenant further testified that after that he paid the landlord rent in cash for every month since, but the landlord failed to issue him rent receipts for any of his payments.

Analysis

Section 26 (1) of the *Act* stipulates 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. Some of these rights include a rent or security deposit overpayment; if the tenant had paid for some emergency repairs (as determined under Section 33 of the *Act*); or as ordered by an Arbitrator.

Section 46 allows 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. However, 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.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

As per the tenant's testimony, I find the tenant did not have any authority under the *Act* to withhold the payment of any rent amount as he did not identify any of the allowable reasons to withhold rent or a portion of rent. I also accept the tenant has not paid this amount to the landlord.

Therefore, I am satisfied the landlord had cause, under Section 46 of the *Act* to end the tenancy. Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety, without leave to reapply.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on November 25, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 55 (1.1) states that if the Notice to End Tenancy referred to under Section 55(1) relates to a notice to end tenancy for unpaid rent, I must grant the landlord an order requiring the payment of the unpaid rent.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$3,150.00 for unpaid rent for half of November 2021 as well as January, February, and March 2022 and considering the tenant's testimony that he paid the landlord all rent with the exception of the half month for November 2021, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord. Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. I note that the tenant acknowledges that he failed to pay the full rent for the month of November and that the landlord had issued receipts for all rent payments made between October and December 2021.

In these circumstances, I find the landlord's provision of receipts for cash payments made during the first months of the tenancy supports the landlord's position that the tenant failed to pay rent for the months of January, February, and March 2022. The tenant provided no evidence, such as bank statements or withdrawal receipts from his bank account in amounts that might corroborate his claim that he had paid rent for those three months.

Based on the above, I prefer the landlord's submissions that the tenant has failed to pay rent in the amounts submitted totaling \$3,150.00 for the months of November 2021, January, February, and March 2022.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,150.00** comprised of the rent owed as noted above.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: March 15, 2022

Residential Tenancy Branch