



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RP, RR, MNDCT, LRE, OLC, AND FFT

Introduction

This hearing was convened in response to the Tenant's 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 requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, for an Order requiring the Landlord to make repairs, for a monetary Order for money owed, for a rent reduction and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in December of 2021 was sent to the Landlords, via registered mail, although he does not recall the date of service. The male Landlord stated that these documents were received on December 09, 2021. As the Landlords acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

On March 03, 2021 the Landlords submitted evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant, via registered mail, on March 02, 2021. The Tenant acknowledged receiving this evidence 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

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 several 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 in this Application for Dispute Resolution is possession of the rental unit and I will, therefore, only consider issues related to that matter, which include:

- the Tenant's application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- the Tenant's application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- the claim to recover the filing fee.

I also considered the Tenant's application to recover the cost of building a fence, only because there was a possibility the Tenant had the right to withhold rent in compensation for building the fence.

The remaining issues are dismissed, with leave to re-apply, as they are not sufficiently related to possession of the rental unit.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is there a need to issue an Order suspending or setting restrictions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to compensation for building a fence?

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on November 01, 2020;
- the Tenant agreed to pay rent of \$2,700.00 by the first day of each month;
- the Tenant is still living in the rental unit;
- the Tenant did not pay rent when it was due on December 01, 2021;
- on December 02, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by December 12, 2021;
- rent for December of 2021 is still outstanding; and
- rent has not been paid for January, February, or March of 2022.

The Tenant stated that he received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on December 02, 2021. He stated that he did not have authority from the Residential Tenancy Branch to withhold rent and that he did not have authority to withhold rent as a result of emergency repairs made by the Tenant.

The Tenant and the Landlords agree that the Tenant built a fence on the residential property just prior to the start of the tenancy and that they discussed terms under which the Landlord would pay for a portion of the fence, which would be paid at the end of the tenancy.

The Tenant stated that he is not aware of the Landlord entering the rental unit without lawful authority.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay \$2,700.00 in rent by the first day of each month and that he has not paid rent for December of 2021.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. As no evidence was presented to establish

that the Tenant had a right under the *Act* to withhold rent for December of 2021, I find that the Tenant owes \$2,700.00 in rent for December of 2021.

On the basis of the undisputed evidence, I find that the parties discussed the Landlord paying for a portion of the cost of building a fence, which would be paid at the end of the tenancy. As the discussion related to a payment that would be made at the end of the tenancy, I find that the Tenant did not have the right to withhold rent for December in compensation for building the fence.

As the discussion related to a fence payment that would be made at the end of the tenancy and the Tenant filed this Application for Dispute Resolution prior to the end of the tenancy, I find that the claim for compensation for building a fence is premature. I therefore dismiss the claim for building the fence, with leave to reapply.

Section 46(1) of the *Act* stipulates that 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 ten days after the date the tenant receives the notice. As the Tenant has not paid the rent that was due for December of 2021, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that on December 02, 2021 the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings.

As the Tenant has not paid the rent for December of 2021 and he was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlords have the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlords a monetary Order, pursuant to section 55(1.1) of the *Act*, for unpaid rent from December of 2021, in the amount of \$2,700.00.

I am unable, pursuant to section 55(1.1) of the *Act*, to grant the Landlord compensation for any rent that accrued after the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlords retain the right to file an Application for Dispute Resolution seeking compensation for unpaid rent/lost revenue for any period after December 31, 2021.

As there is not evidence that the Landlords entered the rental unit without lawful authority, I dismiss the Tenant's application for an Order restricting or setting conditions on the Landlords' right to enter the rental unit.

Conclusion

The claim for compensation for building the fence is dismissed, with leave to reapply.

The application for an Order restricting or setting conditions on the Landlord's right to renter the rental unit is dismissed.

I grant the Landlord an Order of Possession **that is effective two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlords have established a monetary claim, in the amount of \$2,700.00, for rent from December of 2021 and I grant the Landlords a monetary Order for that amount. 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 *Residential Tenancy Act*.

Dated: March 21, 2022

Residential Tenancy Branch