



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, FFT

Introduction

On November 25, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a provision of services or facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, they were reminded to refrain from doing so, and all parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by hand on December 1, 2021, and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been duly served the Notice of Hearing package.

The Tenant advised that he served his evidence to the Landlord on February 24 and March 4, 2021 by hand. The Landlord confirmed that he received this evidence, and

that he was prepared to proceed with this evidence despite some of it being served late. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant on March 10 and March 16, 2021 by hand. The Tenant confirmed that he received this evidence, and that he was prepared to proceed with this evidence despite it being served late. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started in May 2019 as an unwritten tenancy agreement. The Landlord was cautioned that Section 13 of the *Act* requires that tenancies be in writing. They also agreed that rent was established at \$800.00 per month, that it was due on the first day of each month, and that a security deposit was not paid. While they confirmed that rent was to be paid in services rendered, the Landlord advised that it was his understanding that the Tenant would pay rent by completing carpentry work on the rental unit for \$20.00 per hour. However, it was the Tenant's understanding that he would be compensated in the amount of \$25.00 per hour for carpentry work and \$20.00 per hour for non-trades work. Of course, there was no written documentation to support either position.

The Landlord advised that the Notice was served to the Tenant by hand on November 23, 2021 and the Tenant confirmed that he received this. He served the Notice because \$4,720.00 was in arrears and was due on November 29, 2021. The Tenant acknowledged that he understood this due date was wrong and that the rent was due on the first day of each month as noted above. The effective end date of the tenancy was noted on the Notice as December 4, 2021.

The Landlord advised that the Tenant never paid rent, but was to complete carpentry work on the rental unit in lieu of rent. He stated that the Tenant exceeded the \$800.00 that was due for the first few months of the tenancy. However, the Landlord testified that he was short on cash, so he advised the Tenant to stop working so many hours. He stated that he never kept track of the hours that the Tenant worked, and the Tenant did this himself. He submitted that he verbally fired the Tenant in June 2021 and told him that rent was then due; however, the Tenant did not pay any rent and he would do odds jobs around the property while claiming compensation. The Landlord denied permitting the Tenant to do any other jobs on the property in lieu of rent, prior to firing him. The Landlord is claiming that the \$4,720.00 that is owed is for June to November 2021 rent, less an \$80.00 credit. The Landlord referenced his documentary evidence to support his position.

The Tenant advised that the Landlord had paid him in the past for other work that was not carpentry related. He stated that he kept a log of his own hours, and that the Landlord did not audit these; however, he did not submit this logbook as documentary evidence. He denied being fired by the Landlord in June 2021. He confirmed that he was advised in September or October 2021 to stop doing work on the property in lieu of rent. He referenced his documentary evidence submitted to support his position.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 1 of the *Act* defines rent as “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.”

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by the 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.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. The undisputed evidence before me is that the Tenant received the Notice on November 23, 2021. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that “*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*”

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. In the case before me, where a notice to end tenancy is involved, the onus is on the Landlord to justify service of the notice.

As the Tenant received the Notice on November 23, 2021, he must have paid the rent in full on November 28, 2021 or disputed the Notice on Monday November 24, 2021 at the latest. While the Tenant did not pay the amount on the Notice to cancel it, the Tenant did dispute the Notice on November 25, 2021.

While the parties agreed that work could be done in lieu of rent, the undisputed evidence is that the Tenant acknowledged that the Landlord asked him to stop doing work on the property in September or October 2021. As such, the work in lieu of rent arrangement would have ended and rent monies would have been due at this time, at the very least. While the Tenant advised that he had a log of his hours, there is no documentary evidence before me to support how many hours he had accrued, and whether or not that permitted him to withhold rent up to service of the Notice.

Consequently, I find it more likely than not that at least some amount of rent was owing when the Notice was served. As the Tenant has not substantiated that he had accrued enough hours of work to demonstrate that he was not in arrears, I grant the Landlord an Order of Possession effective **two days** after service of this Order on the Tenant. However, while I am satisfied that some rent was outstanding, as the Landlord failed to record any details about how much rent was accrued and/or owed, I decline to award the Landlord a monetary award for any rental arrears pursuant to Section 55 of the *Act*.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 18, 2022

Residential Tenancy Branch