



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, MNR -DR, OPR-DR

Introduction

This hearing was convened in response to separate applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

The tenant requested:

- an order compelling the landlord to conduct repairs to the unit or site pursuant to section 32;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation, or tenancy agreement pursuant to section 62.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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 and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Should the One Month Notice to End Tenancy for Cause, be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Should an order be given compelling the landlord to conduct repairs to the unit?

Should an order be given compelling the landlord to comply with the *Act*, regulation, or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. This tenancy began on September 1, 2021, with monthly rent set at \$1400.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$700.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on March 2, 2022 for unpaid rent due on March 1, 2022. The landlord testified that she posted the notice on the tenants' door. The landlord testified that on March 8, 2022 the tenant paid \$1345.00. The landlord testified that the remaining \$55.00 is still outstanding. The landlord testified that the tenant is also short \$100.00 for April's rent and \$200.00 for May's rent leaving a total of \$345.00 outstanding. The landlord testified that the tenant did not try to pay the outstanding amount in cash as alleged. The landlord testified that the tenant attempted to pay some rent on April 21, 2022 but it was in an application that the landlord was unable to

access. The landlord requests an order of possession and the recovery of the unpaid rent.

The tenant gave the following testimony. The tenant testified that she received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 3, 2022. The tenant testified that she paid \$1345.00 rent on March 8, 2022. The tenant testified that she attempted to pay the outstanding rent on March 9, 2022 but the landlord refused the \$55.00 cash and told the tenant “e-transfers only”. The tenant testified that she attempted to transfer some money from her PayPal account, but the landlord did not accept it.

Analysis

Section 46 of the Act addresses the issue before me as follows:

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.

I confirmed on three separate occasions with the tenant that she received the notice on March 3, 2022 and attempted to pay the remaining \$55.00 of unpaid rent on March 9, 2022. The landlord disputes that the tenant attempted to pay the outstanding amount in cash on that day and the tenant has not provided sufficient evidence to support that. Even *if* she had paid the rent on March 9, 2022 it would not cancel the notice as it was six days after she received the notice and not within the five days as noted above.

In the tenant's own testimony, she confirmed that she attempted to make payment outside of the five-day legislated deadline, six days after being served. Based on the tenant's own testimony and the documentation before me, I find that the tenant did not pay the late rent in accordance with section 46(4) of the Act, accordingly; I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act.

I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided sufficient evidence to show that there is still \$345.00 of unpaid rent owing to the landlord.

The landlord continues to hold the tenant's security deposit in the amount of \$700.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$345.00 from the the tenant's security deposit in full satisfaction of the monetary claim.

As I have found that the tenancy is at an end, I need not consider the One Month Notice to End Tenancy for Cause, accordingly; I dismiss that only with remainder of the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord is granted an order of possession and is entitled to retain \$345.00 from the \$700.00 security deposit.

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: May 05, 2022

Residential Tenancy Branch