



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ODD FELLOWS LOW RENTAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 12, 2022 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, the tenant, and the tenant's friend attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 37 minutes.

This hearing began at 9:30 a.m. with me, the tenant, and the tenant's friend present. The landlord's agent called in late at 9:38 a.m. I did not discuss any evidence with the tenant, in the landlord's absence, except for service of hearing documents. This hearing ended at 10:07 a.m.

The landlord's agent confirmed his name and spelling. The tenant confirmed the names and spelling for him and his friend. The landlord's agent provided his email address, and the tenant provided his mailing address for me to send this decision to them after the hearing.

The landlord's agent confirmed that he had permission to represent the landlord company named in this application ("landlord"). He said that the landlord owns the rental unit. He provided the rental unit address.

The tenant confirmed that his friend would observe only and would not testify at this hearing. The tenant's friend did not testify at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent affirmed, under oath, that he would not record this hearing. At the outset of this hearing, the tenant affirmed, under oath, that neither he, nor his friend, would record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that this tenancy may continue or it may end in two (2) days, based on my decision regarding the 10 Day Notice. I notified both parties that I had 30 days to issue this decision, after the hearing date.

Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were offered multiple opportunities to settle at the beginning and end of this hearing and declined to do so.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The landlord's agent testified that the tenant was served with the landlord's 10 Day Notice on April 12, 2022, by way of posting to the tenant's rental unit door. The tenant confirmed receipt on the same date, as per the above method. Both parties agreed that the effective move-out date on the notice is April 25, 2022. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on April 12, 2022. The tenant confirmed that he filed this application to dispute the 10 Day Notice on April 17, 2022.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2021. Monthly rent in the current amount of \$1,030.00 is payable on the first day of each month. A security deposit of \$515.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The tenant seeks to cancel the landlord's 10 Day Notice, an order to comply, and to recover the \$100.00 application filing fee. The landlord seeks an order of possession based on the 10 Day Notice.

Both parties agreed that the landlord issued the 10 Day Notice for unpaid rent of \$1,827.50 due on April 1, 2022. Both parties agreed that the tenant failed to pay rent of \$3,887.50 total, to the landlord, from January to June 2022.

The landlord's agent testified regarding the following facts. The landlord provided an account statement as evidence. The tenant failed to pay rent in January and February 2022. The landlord's agent talked to the tenant on February 7, 2022, and the tenant agreed to a repayment schedule, so a contract was signed by both parties. The tenant did not honour his contract for the repayment of rent. On March 17, 2022, the tenant edited his copy of the repayment schedule and put in new dates that were not discussed or approved by the landlord. The landlord provided a copy of this document in its evidence. The landlord's agent was advised to contact the tenant but was unable to do so. On March 29, 2022, the landlord left a notice under the tenant's door, stating that he would return on March 31, 2022, to discuss another solution. On March 31, 2022, the landlord's agent went to the tenant's rental unit and was unable to contact the

tenant. The landlord's agent reported his findings to his boss and was advised to issue a 10 Day Notice to the tenant, which he did, on April 12, 2022. The tenant owed \$1,827.50 in unpaid rent on April 1, 2022, as per the 10 Day Notice. This includes January and February rent of \$1,030.00 for each month, plus four equal installments, as per the rent repayment plan, of \$257.50.

The tenant testified regarding the following facts. He agrees that an agreement was made with the landlord for repayment of rent. He wanted to rectify this issue with the landlord a long time ago, but it was impossible to contact the landlord. The tenant was always at work when the landlord's agent tried to contact him at the rental unit. The tenant agrees that that he did not pay rent in May 2022 because the landlord tried to take \$1,300.00 out of his bank account and the tenant thought the repayment agreement was null and void, so he only had \$1,030.00 in his bank account for rent that month. The landlord does not always withdraw the rent on the first of the month, as sometimes it is done on the 3rd or 4th of the month. The tenant provides rent checks to the landlord and every time it bounces, he is charged a \$48.00 NSF fee. He wants to stay at the rental unit and fix this issue with the landlord. He wants a phone number to contact the landlord.

The landlord's agent stated the following facts in response to the tenant's submissions. The only payment made by the tenant was in April 2022, for \$1,030.00. The tenant currently owes \$3,887.50 total for rent from January to June 2022. He understands that the tenant was trying to contact him. The tenant signed a tenancy agreement, so he cannot pay rent on different days and times, as the landlord automatically withdraws the rent. Both parties agreed to a rent repayment agreement, based on the tenant's dates, but it was not followed.

The tenant stated the following facts in response to the landlord's response. The tenant agrees that he owes outstanding rent in the current amount of \$3,887.50 total to the landlord. The tenant paid February 2022 rent to the landlord.

Analysis

In the details of dispute of the tenant's online RTB application, the tenant stated the following as to why he was disputing the landlord's 10 Day Notice:

"I am required to pay my rent by direct debit. I agreed to make the first payment toward my rent arrears on March 16. I started a new job March 14 and learned my first payday would be March 23. I left phone messages and wrote a note to

Jake asking him to wait until March 23 to debit my account. The landlord debited my account March 21 and it bounced. I left further messages but Jake did not respond. I deposited the payment on March 23 but they did not withdraw it. Further details are attached.”

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant said he received the landlord's 10 Day Notice on April 12, 2022 and filed his application to dispute it on April 17, 2022. Therefore, he is within the five-day time limit to dispute the notice. I informed both parties of the above information during this hearing.

I find that the landlord provided affirmed, undisputed evidence at this hearing. During this hearing, the tenant agreed that he failed to pay rent in the current amount of \$3,887.50 total, to the landlord. In his online RTB application, as noted above, the tenant agreed that he owed unpaid rent to the landlord. During this hearing, both parties agreed that they signed a repayment plan for rental arrears, and it was not followed.

I find that the tenant failed to pay the full rent due on April 1, 2022, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, as per section 26 of the *Act*, the tenant did not provide a valid reason to deduct any amounts from rent, such as emergency repairs under section 33 of the *Act* or an order from an Arbitrator.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent or to provide a valid reason to deduct amounts from rent, within five days led to the end of this tenancy on April 25, 2022, the effective date on the 10 Day Notice.

Although the tenant made partial payments for unpaid rent to the landlord, he did not pay the full rent owed. Therefore, I find that the landlord did not waive its rights to enforce the 10 Day Notice, by accepting partial rent payments from the tenant.

In this case, the 10 Day Notice required the tenant and anyone on the rental premises to vacate the premises by April 25, 2022. As this has not occurred and this date has long passed since this hearing occurred on June 13, 2022, I find that the landlord is entitled to a two (2) day Order of Possession, against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Therefore, the tenant's application to cancel the landlord's 10 Day Notice is dismissed without leave to reapply.

Since this tenancy is ending, I dismiss the tenant's application for an order to comply, without leave to reapply. This claim only relates to an ongoing tenancy.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Section 55 of the *Act* requires me to issue a monetary order to the landlord, without the landlord being required to file a separate RTB application for same, if I uphold the landlord's 10 Day Notice and dismiss the tenant's application to cancel the 10 Day Notice.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

Both parties agreed that the tenant failed to pay rent in the current amount of \$3,887.50 total, to the landlord. Accordingly, I find that the landlord is entitled to rental arrears of \$3,887.50 from the tenant.

The landlord continues to hold the tenant's security deposit of \$515.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$515.00, in partial satisfaction of the monetary award. I issue a monetary order in the landlord's favour in the amount of \$3,372.50 against the tenant, for the balance owed.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$515.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,372.50 against the tenant. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 13, 2022

Residential Tenancy Branch