



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, OPR-DR, MNR-DR, FFL, RR, RP, OLC, PSF

Introduction

This hearing was convened in response to cross applications.

File #210065290 was initiated by way of a Direct Request Proceeding but was scheduled as a participatory hearing by the Residential Tenancy Branch. In this Application for Dispute Resolution the Landlord applied for an Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she did not initially receive the hearing documents for the above Application for Dispute Resolution that were sent to her by the Residential Tenancy Branch, via email, as they were sent to her “junk mail”. She stated that she did not locate the documents until after the deadline for serving those documents to the Tenant had passed. She stated that upon realizing that she missed the service deadline, she contacted the Residential Tenancy Branch and it was recommended that she file another Application for Dispute Resolution.

The Landlord stated that she then filed Application for Dispute Resolution #210069218, in which she duplicated the claims made in file #210065290. By doing so, I find that the Landlord abandoned file #210065290 and that there is no need for me to consider that Application for Dispute Resolution.

Application for Dispute Resolution #210069218 was initiated by way of a Direct Request Proceeding but was scheduled as a participatory hearing by the Residential Tenancy Branch. This participatory hearing was convened to consider the Landlord's application for an Order of Possession on the basis of the same Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on April 27, 2022 Application for Dispute Resolution #210069218 was personally served to the Tenant with the first name "Michelle" by a third party. The Landlord submitted a document from this third party in which the individual declares the Application for Dispute Resolution was served on April 27, 2022. This Tenant stated that she received documents from the third party but she did not realize it included the Landlord's Application for Dispute Resolution.

The Tenant with the first name Michelle, hereinafter referred to as the Tenant, stated that she is in possession of Application for Dispute Resolution #210069218 but she thinks it was posted on her door approximately two weeks ago.

On the basis of the document from the third party who declared she served the Application for Dispute Resolution to the Tenant, I find that the Tenant was personally served with the Application for Dispute Resolution on April 27, 2022. I find this declaration to be more reliable than the Tenant's testimony, as the Tenant was not certain if the Application for Dispute Resolution was included with the documents personally served to her on April 27, 2022.

File #210065928 was filed by the Tenant. In this Application for Dispute Resolution the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to make repairs and provide services or facilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for a rent reduction.

The Tenant stated that on March 28, 2022 the Dispute Resolution Package was sent to the Landlord, via email. The Landlord stated that she did not receive these documents from the Tenant, although she received a courtesy copy from the Residential Tenancy Branch. The Tenant no evidence to corroborate her testimony that these documents were sent to the Landlord by email.

As the Tenant has submitted insufficient evidence to establish that the Tenant's Application for Dispute Resolution was served to the Landlord, I dismiss the Tenant's Application for Dispute Resolution, with leave to reapply. The Tenant retains the right to file another Application for Dispute Resolution for any of the issues in her Application for Dispute Resolution, with the exception of anything related to the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings.

I specifically note that even though the Tenant's Application for Dispute Resolution has been dismissed, with leave to reapply, the most urgent issue in dispute in the Tenant's Application for Dispute Resolution, which is whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be set aside, will be determined at these proceedings. As I will considering, on the basis of the Landlord's Application for Dispute Resolution, whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be upheld, that Notice to End Tenancy will be set aside if the Landlord fails to establish grounds to end the tenancy pursuant to section 26 of the *Act*.

I further note that the Tenant is not unduly prejudiced by my decision to dismiss her Application for Dispute Resolution, as the only issue I would have considered in the Tenant's Application for Dispute Resolution would have been the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. The rest of the issues in the Tenant's Application for Dispute Resolution would have been severed, pursuant to rule 2.3 of the Residential Tenancy Branch Rules of Procedure, which authorizes me to dismiss unrelated disputes contained in a single application.

On April 22, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant at the same time the Application for Dispute Resolution was served to the Tenant on April 27, 2022. As the Tenant acknowledged receiving these documents, this evidence was accepted as evidence for these proceedings.

In June of 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the door of the rental unit one or two weeks ago. The Tenant acknowledged receiving this evidence, although she also cannot recall the date it was received. Although there is insufficient evidence to determine that this evidence was served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, I am accepting it as evidence for these proceedings as the Tenant did not indicate she needed more time to

consider the evidence. I note that much of this evidence is not particularly relevant to the issues I will be considering at these proceedings.

On June 27, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was emailed to the Landlord on June 27, 2022. As this evidence was not served to the Landlord until the morning of the hearing, I find that it clearly does not comply with the timelines established by the Residential Tenancy Branch and that the Landlord has not had a fair opportunity to consider it. As such, the evidence was excluded.

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 #1

The Tenant stated that the individual named as an Applicant in the Tenant's Application for Dispute Resolution, who has the first name of "Mary" is her mother.

The Landlord stated the individual named as a Respondent in the Landlord's Application for Dispute Resolution, who has the first initial "S", is the Tenant's mother.

The Landlord and the Tenant agree that the Tenant's mother did not enter into a tenancy agreement with the Landlord. As the mother did not enter into a tenancy agreement with the Landlord, she has no legal rights or obligations under this tenancy agreement and should not have been named in these Applications for Dispute Resolution. As such, any Orders issued pursuant to these proceedings will not name the mother.

Preliminary Matter #2

I acknowledge that the Landlord submitted evidence that relates to problems with the tenancy and that relates to the Tenant giving notice to end the tenancy.

As the parties were advised at the hearing, the issues in dispute are limited to the issues outlined on the Landlord's Application for Dispute Resolution. As the Landlord did not apply for an Order of Possession for any reason other than the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, that is the only reason for ending the tenancy that will be considered at these proceedings.

The Landlord retains the right to serve the Tenant with a One Month Notice to End Tenancy for Cause and/or to file an Application for Dispute Resolution seeking an Order of Possession on the basis of the Tenant giving notice to end the tenancy.

Preliminary Matter #3

The Landlord amended the Application for Dispute Resolution to include a claim for damage to the rental unit and for costs associated to the Tenant not vacating the rental unit.

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 Landlord has amended the Application for Dispute Resolution to include 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 Landlord's application for an Order of Possession;
- the Landlord's application for a monetary Order for unpaid rent; and
- the filing fee paid by the Landlord.

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

The Landlord retains the right to file an Application for Dispute Resolution seeking financial compensation for issues not addressed at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?

Is the Landlord is entitled to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2021 and the Tenant agreed to pay rent of \$1,350.00 by the first day of each month.

The Landlord stated that on March 02, 2022 the Tenant sent rent of \$600.00 to the Landlord, via e-transfer, which was subsequently cancelled. The Tenant agreed that she cancelled this \$600.00 e-transfer on March 03, 2022.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which is dated March 01, 2022, was personally served to the Tenant on March 03, 2022. On the Notice to End Tenancy the Landlord declared that the Notice was posted on the door of the rental unit. On the Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on March 02, 2022.

The Tenant stated that she located this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities posted on the door of the rental unit on March 05, 2022. She stated that this is the Notice to End Tenancy that she disputed in her Application for Dispute Resolution, which she filed on March 10, 2022.

The Tenant stated that:

- on March 10, 2022 she placed an envelope under the door of the office of this resort;
- the envelope contained a cheque for rent for March of 2022, in the amount of \$1,350.00;
- she found the envelope posted on her door on March 12, 2022; and

- the Landlord did not advise her of where she should deliver rent cheques; and
- she did not make any attempt to pay rent after March 10, 2022.

The Landlord stated that:

- she did not receive the envelope that was slid through the resort office door on March 10, 2022;
- the office does not act as her agent for this tenancy, although the resort office will act on her behalf if there is an emergency at the unit;
- the resort manager told her that she had found an envelope from the Tenant in the office and that it was returned, unopened to the Tenant;
- the resort manager did not deliver the Tenant's envelope to the Landlord because the manager does not act as a "courier"; and
- she has not received any rent for March, April, May, or June of 2022.

The Tenant submits that the resort manager, who the parties refer to as "Lori" has delivered documents to the Tenant for these proceedings. The Landlord denies this submission.

The Landlord and the Tenant agree that Lori, the resort manager, was scheduled to complete a final inspection of the rental unit in February of 2022. The Landlord stated that she was paying Lori to conduct the final inspection.

The Landlord and the Tenant agree that the resort manager, Lori, signed a Proof of Service, in which Lori declared that she posted the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the door of the rental unit on March 02, 2022.

The Landlord applied to amend the Application for Dispute Resolution to include all rent currently due. The Tenant stated that she is willing to pay all rent that is currently due, she just wants clarification that it can be paid by cheque.

At the conclusion of the hearing the Landlord asked to call the resort manager as a witness. The Landlord was advised that there was insufficient time in the schedule to call the witness. The Landlord was asked if she would like to adjourn the hearing to provide her with the opportunity to call this witness, at which time the Landlord stated that she did not want an adjournment. As the Landlord declined the opportunity for an adjournment, the hearing was concluded without hearing from the Landlord's witness.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant did not pay the rent, in full, when it was due on March 01, 2022.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

On the basis of the testimony of the Tenant and the documentary evidence submitted by the Landlord, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was posted on the door of the rental unit. Although the Landlord testified that it was personally served to the Landlord, her testimony is inconstant with the information in the Landlord's Application for Dispute Resolution, in which the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on March 02, 2022, and it is inconsistent with a signed a Proof of Service, in which a third party declares it was posted on the door of the rental unit on March 02, 2022. I find that the Tenant's testimony is more reliable, as it supported by written documents submitted by the Landlord.

On the basis of the information provided by the Landlord in the Application for Dispute Resolution, in which the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on March 02, 2022, and the signed a Proof of Service, in which a third party declares it was posted on the door of the rental unit on March 02, 2022, I find the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the Tenant's door on March 02, 2022.

I find that the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on March 05, 2022. This conclusion is based, in part, on the Tenant's testimony that it was received in March 05, 2022 and, in part, on section 90 of the *Act*, which deems a document posted on the door to be received three days after it was posted. As I have concluded the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door on March 02, 2022, I find it would be deemed received on March 05, 2022.

On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by March 11,

2022. I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities served as proper notice to end the tenancy, pursuant to section 46 of the *Act*.

Section 46(4)(a) of the *Act* stipulates that a tenant has five days from the date of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to pay the outstanding rent, in which case the Notice to End Tenancy has not effect.

On the basis of the undisputed evidence, I find that the Tenant paid the outstanding rent for March of 2022 when she delivered a cheque, in the amount of \$1,350.00, to the resort manager's office on March 10, 2022. As the Tenant paid the outstanding rent within 5 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities had no force or effect, pursuant to section 46(4)(a) of the *Act*.

I find that the payment that was delivered to the resort manager's office on March 10, 2022 should be considered to be a payment delivered to an agent for the Landlord. Although the Landlord submits that the resort manager, Lori, did not act as her agent in this tenancy, I find it reasonable for the Tenant to conclude that Lori was acting, at least at times, as an agent for the Landlord. In reaching this conclusion I was heavily influenced by the proof of service that was submitted in evidence, which shows that Lori served this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and by the undisputed evidence that Lori had been scheduled to conduct a final condition inspection of the rental unit.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no force or effect, pursuant to section 46(4)(a) of the *Act*, the Landlord's application for an Order of Possession is dismissed.

On the basis of the undisputed evidence that the rent cheque for March of 2022 was returned to the Tenant, I find that the Landlord has not received rent for March of 2022 and that the Landlord no longer has the ability to cash the rent cheque the Tenant left at the resort office on March 10, 2022. I therefore find that the Tenant must pay the Landlord \$1,350.00 in rent for March of 2022.

I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

On the basis of the undisputed evidence that no rent has been paid for April, May, and June of 2022, I find that the Tenant must pay \$4,050.00 in rent for those months. In the event the Tenant does not pay this rent, the Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

To provide clarity to the parties, the Tenant retains the right to pay her rent in cash, by e-transfer, or by cheque. As the Landlord advised the Tenant at the hearing that the resort manager does not act on her behalf, I find that the Tenant no longer has the right to pay her rent to the resort manager. In the event the Tenant wishes to pay her rent by cheque, she must deliver or mail the payment to the service address provided for the Landlord on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and the Landlord's Application for Dispute Resolution.

I find that the Landlord's second Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute Resolution, file #210065290, was abandoned by the Landlord and replaced with Landlord's Application for Dispute Resolution file #210069218.

The Tenant's Application for Dispute Resolution was dismissed, with leave to reapply for all issues except the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord's application for an Order of Possession on the basis of this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, without leave to reapply. This tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord has established a monetary claim, in the amount of \$5,500.00, which includes \$5,400.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I therefore grant the Landlord a monetary Order for the balance of \$5,500.00. In the event the Tenant does not voluntarily 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 *Act*.

Dated: June 27, 2022

Residential Tenancy Branch