Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Couldwell Investment LLC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, CNR

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on March 31, 2022 to dispute a One Month Notice to End Tenancy for end of employment (the "One-Month Notice".

The Tenant filed a second Application on April 1, 2022 to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"). They also applied for compensation for monetary loss or other money owed. The Residential Tenancy Branch joined this second Application to the first because they concern the same parties in the same tenancy.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 21, 2022 and reconvened on July 25, 2022. Both the Landlord and the Tenant attended the conference call hearings. I explained the process and both parties had the opportunity to ask questions on the process and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matters

The immediate issues requiring resolution between these two parties are:

- the One-Month Notice issued on March 30, 2022 whereby the Landlord seeks to end the tenancy; and

- the 10-Day Notice issued on March 9, 2022 whereby the Landlord seeks to end the tenancy.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending. By Rule 6.2, I do not consider the Tenant's claim for compensation. By Rule 2.3, I find this issue is unrelated and I amend the Tenant's Application to exclude this piece. The Tenant has leave to reapply on that specific ground.

Issues to be Decided

Is the Tenant entitled to a cancellation of the April 1, 2022 10-Day Notice?

Is the Tenant entitled to a cancellation of the March 30, 2022 One-Month Notice?

If the Tenant is unsuccessful in either of these Applications, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Background and Evidence

The parties agreed that there was a verbal tenancy agreement in place.

In their evidence, the Tenant provided a written summary of that agreement, providing for $800 per month rent, "with the possibility to work off rent", in a work-rent agreement with the Landlord. This agreement was based on the rental ad that was posted by the Landlord and was "a flat rate of $600 rent a month, and work would be provided for the remainder."

The Landlord signed the 10-Day Notice on April 1, 2022, setting the move-out date for April 30, 2022. The second page of this document has the Landlord's indication that the Tenant failed to pay the amount of $2,000 on April 1, 2022. The Landlord checked the box to indicate that

they served this document by “Email to an email address that [the Tenant has] provided as an address for service.”

In the hearing, the Tenant challenged the Landlord’s service of the 10-Day Notice, where they did not agree to accept service by email. The 10-Day Notice was supposedly served by the Landlord on April 1st and that would normally entail a deemed service period of 3 days. The Tenant submitted that this issue could not be heard, effectively cancelling the 10-Day Notice, because the Landlord did not serve it in the correct manner.

In the hearing the Tenant submitted they requested a physical copy of the 10-Day Notice, and “it sets a dangerous precedent for service of 10-Day Notices where [email service] was not consented.” The Tenant’s evidence on this aspect of their submissions is their email to the Landlord from March 31, in response to the One-Month Notice service, wherein the Tenant stated “to hand a tenant a notice you need to physically give it too [*sic*] the tenant . . . Not one of your eviction notices has been delivered properly.” Specific to the 10-Day Notice, the Tenant presented a copy of their email to the Landlord on April 1, inquiring if “all 3 of these 10 day notices you sent me this morning [are] the same notice?” as well as “. . . please send me a physical copy threw [*sic*] registered mail. . .”

With regard to the rent amounts paid, the Tenant provided their own bank account balance statements showing consistent withdrawals of $600 towards the start of each calendar month for each of the remainder of 2016 when the moved in, and then through 2017 through to 2021. They included images for the months immediately preceding this present hearing in July 2022.

The Tenant also submitted images of previous notices to end tenancy from the Landlord, from June 2021 and November 2021, both for the Landlord’s own use of the rental unit. The Tenant challenged each of these notices via dispute resolution, and the Arbitrator in each hearing cancelled these notices to end tenancy. As well, the Landlord applied for an urgent end to the tenancy on the basis that the Tenant’s actions were negatively affecting the Landlord’s own health, and the Arbitrator in that hearing dismissed that Application from the Landlord. In regard to the present notices to end tenancy issued by the Landlord, the Tenant described the Landlord’s “history of bad faith eviction notices [to end tenancy] so that’s on the radar.”

Another piece in the Tenant’s evidence is a November 30, 2021 message “To Whom It May Concern”. This sets out the Tenant’s position that

> Until the eviction notice comes into effect the Tenant Agreement is still valid and in effect . . .work without Reprisal or Discrimination . . . must be provided to work off the remainder 200$ of rent to make a total of 800$ a month, as was originally verbally agreed upon between all parties.

Further:

> If the Landlord . . .[does] not agree to uphold the verbal Tenancy Agreement that was made in the month of October year 2016, then the Tenant/Employee . . . request[s] a rent reduction to a straight 600$ a month and possible Compensation for the loss of income."

The Tenant provided a document entitled "Shelter Information" that appears to be an official government form in which a party provides basic information about their tenancy. The Tenant completed the details in this document and provided the rental unit address and the basic information that the rent amount was $600 per month. The Landlord signed the document on August 13, 2019.

In their written submissions the Landlord provided that the property is a ranch and "there is always ranch work to be done . . .on an ad-hoc basis." The Tenant here was the live-in employee. The relationship between the parties arose because of an online ad from 2016, with the Tenant hired in the capacity that was listed in that ad. The Tenant's work quality began to decline in approximately 2018, and in 2019 the Tenant stopped performing ranch work. The Landlord posits that the online ad, and the follow-up ads from 2018 and 2019, made it clear that ranch work was a material term of the tenancy/employment agreement.

The Landlord presented that at the initial meeting of the parties in September 2016, the Landlord stated to the Tenant that the rent was $800 per month, and that "any tenant residing in the [rental unit] would need to provide part-time labour." The Tenant proposed the arrangement to pay $600 per month and then provide labour for the remaining $200. After a one-week trial period, the parties verbally agreed that rent was $800 per month, with the Tenant paying $600 and working for the remainder at $15 per hour. Also, the Tenant would pay the $200 in the event they failed to perform ranch work. The Landlord submitted that "Since the commencement of the Agreement, the above-noted terms have been acknowledged by the Tenant, either expressly or implicitly."

In their written submission, the Landlord presented that, in a prior dispute resolution hearing, the Tenant explicitly set out their acknowledgement of that verbal agreement that was in place in their written submission. The Landlord provided the Tenant's own summary of the agreement from that hearing as an exhibit to their written submission. In that summary, the Tenant set out: "Tenant would pay a minimum of $600 a month, and work off the remaining $200 a month for a total of $800 a month."

Appearing as another exhibit in the Landlord's evidence is their email to the Tenant dated January 16, 2022 in which they stated directly to the Tenant: "Month to month agreement for $800 per month for mobile home situated on the ranch. $600 to be paid in payment and $200

by way of labour on the ranch." The Landlord also set out in that same message that the Tenant was "in arrears for many months when you did not pay the $200 in labour, because you did not wish to work . . ."

Another exhibit in the Landlord's evidence is their text message to the Tenant dated January 25, 2020 (the year indicated in the name of the file attached as evidence), showing:

> . . .you have not done any work since Aug. Because of this you owe $200 per month for sept thru Jan. I won't discuss or argue about it. It is due. You can pay it, work it off or I can give it to the authorities. You have had more than enough opportunity . . .

To this, the Tenant responded

> I shouldn't have to pay full rent for a furnished house that which appliances don't work, that is against the law and in violation of human rights.

The Landlord disputes the Tenant's basic position that the Landlord did not provide work to the Tenant despite the arrangement. Rather, in the Landlord's submission the Tenant refused to work properly. The Landlord submits the Tenant's records showing $600 paid per month show that this was the extent of what was paid, and this was "contrary to the terms of the Agreement" and the Tenant did not present that they paid the remaining $200 through alternative means. The Landlord submits this violates s. 26 of the *Act*.

Specific to the 10-Day Notice, the Landlord draws upon other Tenant evidence from the April 2022 prior hearing. As another exhibit to their written submission, the Landlord provided the Tenant's statement for "Proof of Rent Paid" which includes e-transfer confirmations, among them a message from December 2021: "200$ Left For full 800$ December rent 2021." The Landlord submits this is an indication the Tenant knew the total monthly rent was $800, with the requirement for the full amount even if the Tenant did not perform $200 worth of ranch work.

The Landlord had the chance to respond to the Tenant's submission of the "Shelter Information" document in the hearing. They stated this was "a form that was determined entirely by the recipient".

Analysis

I find there was a verbal tenancy agreement in place between the parties. The rent amount was $800. The Landlord provided work to the Tenant to assist the Tenant in paying that full rent amount.

I find the rent amount was $800 and was not contingent on the Landlord providing work to the Tenant as the Tenant submitted. Rather, I find the Tenant's submission on this point is their acknowledgement, and confirmation, that the full rent amount was $800. I rely on the Tenant's November 30, 2021 message to show their knowledge of the basic $800 per month rent amount. In that message, they were requesting a reduction to the amount of $600 in light of work not being performed. I find this is acknowledgement by the Tenant that the full rent amount was $800. I give less weight to the Tenant's own "Shelter Information" document when compared to the direct testimony of the Landlord as well as the record showing the Landlord's message of January 16, 2022, and a text message labelled as January 25, 2020, in which they clearly stated to the Tenant that the rent amount was $800.

As well, I give weight to the Landlord's individual piece of evidence that was the Tenant's summary statement on the rent amount ("Tenant would pay a minimum of $600 a month, and work off the remaining $200 a month for a total of $800 a month.") submitted by the Tenant in a previous dispute resolution hearing. This contrasts with what the Tenant provided for this hearing ("a flat rate of $600 rent a month, and work would be provided for the remainder.") I find this is selective in wording as to draw down the Tenant's credibility on their statements of their understanding of the requirement for the full $800 per month payment of rent, regardless of whether they worked for that extra amount or not.

I find the agreement was not contingent on available work, or the Landlord providing that work, as the Tenant submits. I find it more likely than not that the Landlord provided work to the Tenant as consideration, after an initial one-week assessment to ensure the Tenant was capable of performing said work, thereby guaranteeing the $800 rent amount each month going forward. I find on a cattle ranch there was always work available of whatever sort. Further, at $15 per hour this equates to approximately 13 hours of work in total to cover the rent shortcoming. This is a relatively low threshold for coverage of an extra rent amount; therefore, I find it more likely than not that was more assurance to the Landlord of a guaranteed set rent amount of $800 as being the rent amount. Further, should the Tenant not work, they would be nonetheless responsible for paying that full amount. I find the Landlord performed a tentative assessment of the Tenant's work capability and presumed the $800 would be paid based on that assessed capability. The Landlord did not anticipate the Tenant's non-work as determining the rent amount, and the Tenant provided no evidence to show that the Landlord agreed to a reduction in rent.

Having established the full rent amount as $800 and finding that the Tenant was to pay that amount even if they did not work, I next find the record shows the Tenant did not pay the full rent amount for an extended period of time. This is shown in the Tenant's own evidence of the amounts they paid for virtually all consecutive months in question. This was also shown in the Tenant's record showing their additional payment of $200 to the Landlord in December 2021: their statement, existing in the record, is "200$ Left For full 800$ December rent 2021". I find the continuing shortcoming in the full rent amount was the basis for the Landlord serving the 10-Day Notice.

The Tenant questioned the Landlord's service of the 10-Day Notice, with email not being an agreed-upon method of service, and their subsequent request for a "physical copy".

The *Act* s. 71 gives an arbitrator the authority to make an order on sufficient service of documents, even where that document was not served in accordance with s. 88 or s. 89. On the authority of s. 71(2)(b), I find the Landlord completed service of the 10-Day Notice via email to the Tenant on April 1, 2022. This provision in the *Act* overrides the requirement of "an email address provided as an address for service by the person". To be clear: this is not a situation where the Tenant claimed they did not receive the 10-Day Notice; rather, they responded to the Landlord's email that attached the document Moreover, they applied for Dispute Resolution on that same day. I find this is an acknowledgement of service by the Tenant; therefore, I do not cancel the 10-Day Notice because of ineffective service.

The Tenant questioned the Landlord's good faith in issuing this 10-Day Notice. This occurs after previous attempts by the Landlord to end the tenancy. I find the previous hearings and outcomes do not impinge on the Landlord's legal right to end the tenancy for unpaid rent, and this is not a situation where the Landlord is attempting to end the tenancy for cause or their own use of the rental unit which do legitimately raise questions of the Landlord's good faith. Above, I established that the Tenant has not been paying rent as they are obligated to do under the agreement. Though the Tenant stated the $800 amount was not in the agreement, I find that it was.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The Tenant was not maintaining their work, as demonstrated by the Landlord in their evidence; therefore, I find the Tenant was obligated to pay the full amount of $800 per month for rent and there was no authority for a deduction.

In s. 46(1), the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice.

Following this, s. 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling that notice, or dispute it by filing an application for dispute resolution.

I am satisfied the Landlord served the 10-Day Notice to the Tenant for rent amounts owing. The Tenant received the 10-Day Notice on the same day it was issued, on April 1st. I dismiss the Tenant's Application for a cancellation of that 10-Day Notice. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant that landlord an order of possession.

I find that the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an order of possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, I grant the rent amount of $2,000 with a Monetary Order. The Landlord must file an Application for an order for any other rent amounts outstanding.

Given that the tenancy will end on the basis of the April 1, 2022 10-Day Notice, I dismiss the Tenant's challenge to the One-Month Notice issued by the Landlord on March 30, 2022, without leave to reapply.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, **effective TWO DAYS after they serve it upon the Tenant**. Should the Tenant fail to comply, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 55(1.1) of the *Act*, I grant the landlord a Monetary Order in the amount of $2,000, for rent amounts owed by the Tenant. I provide the Landlord with this Monetary Order in the above terms and the Landlord must serve the Tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the Landlord may file this Order may be filed in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 27, 2022

Residential Tenancy Branch