



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RPP, FFT
 OPC, FFL
 CNC, FFT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant and 1 application made by the landlord which have been joined to be heard together.

The first application of the tenant seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of the application.

The second application of the tenant seeks an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord.

The landlord's application seeks an Order of Possession for cause and to recover the filing fee from the tenant.

The landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant had joined the call. The tenant attended 26 minutes after the time scheduled for the hearing, while the landlord was testifying.

The tenant also gave affirmed testimony, and the landlord called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The landlord advised that he was not served with the tenant's Hearing Packages or evidence, however the tenant has provided proof that the landlord was served by

registered mail, which was not collected by the landlord. The landlord agreed that he had not checked the mail. The *Residential Tenancy Act* specifies that documents served by registered mail are deemed to have been served 5 days after mailing, and I find that the landlord has been served with the Hearing Packages and evidence of the tenant in accordance with the *Act*. The tenant agreed that all of the landlord's evidence has been received. Therefore, all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2022 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Act*?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property, to wit: a ceramic pot?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 2, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month is payable at the end of each month, in advance for the following month, and there are currently no rental arrears. On September 30, 2019 the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a room in the basement of the landlord's home; the landlord also resides in the rental home, and has 2 basement rooms rented as well as 2 in the upper level. There is no written tenancy agreement, although the landlord prepared one, but the tenant failed to sign it and the landlord let it slide.

The landlord further testified that the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 30, 2022. A copy has been provided by the tenant for this hearing and it is dated April 1, 2022 and contains an effective date of vacancy of April 10, 2022. The reason for issuing it states that the

tenant failed to pay rent in the amount of \$735.00 that was due on March 31, 2022, but does not know when the tenant paid the outstanding rent.

The landlord further testified that on June 4, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause by a third party. The landlord and the tenant have provided copies, however they differ, and the one provided by the landlord is not signed. They are both dated March 31, 2022 and contain an effective date of vacancy of April 30, 2022. The reasons for issuing it, on both copies provided for this hearing state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord testified that the tenant was late paying rent for May, 2021, having only paid \$545.00 on April 30, 2021, but does not know when the balance was paid. The tenant also paid \$595.00 on January 1, 2022 and the balance in April, 2022. The tenant was also late paying rent for February, 2020 by paying rent on February 12, 2020. The landlord does not keep a Tenant Ledger but relies on e-transfers to keep track of what is owed and by whom.

With respect to the second reason for ending the tenancy, the landlord testified that the tenant turned off a switch for the gas furnace for the whole house and everyone upstairs was cold. Some tenants bought heaters and the hydro bill was over \$1,000.00. A copy of the hydro bill has been provided for this hearing.

With respect to the final reason for ending the tenancy, the landlord testified that the tenant got a cat without notifying the landlord, and pets are not permitted.

The landlord's witness testified that he served the tenant with an envelope at the request of the landlord, but does not know what the envelope contained, and does not recall the date it was served.

The tenant testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the tenant on April 1, 2022, and the tenant actually did pay the rent on

April 1, 2022. For no reason, the landlord increased the rent by \$80.00 to \$735.00 and the tenant chose to pay it because the landlord gave the notice to end the tenancy.

With respect to repeated late rent, the tenant testified that rent in the amount of \$595.00 was paid to the landlord on January 1, 2020. The tenant told the landlord that the tenant had been laid off from work and gave the landlord the balance about a week later, and the landlord agreed. Rent was paid on February 12, 2020 and the landlord was well informed, and it was later than the tenant intended, however the tenant paid \$675.00 which provided the landlord with a \$25.00 late fee. Rent in May, 2020 was late due to COVID-19, and the tenant was awaiting government funds, but paid \$670.00.

The tenant further testified that no one, the landlord nor other tenants ever talked to the tenant about the furnace. However, there is a switch and occasionally the tenant turned it off during the summer years ago. The landlord initially said that the \$1,000.00 hydro bill was caused by the tenant, but later the landlord stated to all tenants that he believed may have caused the increase, demanding each tenant share the cost. A copy of the landlord's message has been provided for this hearing.

The landlord said that the tenant didn't need to sign a tenancy agreement, and did not indicate that no pets were allowed; the tenant told the landlord prior to moving in that the tenant had a cat and the landlord said that was fine. A copy of a text message from the landlord indicating that no pet damage deposit was required has been provided for this hearing.

The tenant went out of town for a few days, and when the tenant returned, a beautiful and expensive ceramic pot outside the lower door in the basement was missing. The landlord was the only person there at the time, and all that he left was a plant holder. The tenant wants it returned or be reimbursed, but does not know the cost; it was a gift.

Analysis

Where a tenant disputes a notice to end a tenancy, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

In this case, the landlord testified that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 30, 2022, however it is signed and dated on April 1, 2022. I fail to see how a landlord can serve a Notice prior to signing and issuing it. Further, the law specifies that once served with such a Notice, the tenant

has 5 days to pay the rent, in which case the Notice is of no effect. The landlord does not know when the tenant paid the rent, and therefore, I am not satisfied that the tenant didn't pay the rent within 5 days of service, and I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

With respect to repeated late rent, the landlord testified that the tenant paid rent late on April 30, 2021, but does not know when the balance was paid. The landlord also testified that the tenant paid rent on February 12, 2020 as well as January, 2022. The tenant agreed that rent was late for January, 2020 and February, 2020, as well as May, 2022. I refer to Residential Tenancy Policy Guideline # 38 - Repeated Late Payment of Rent, which states:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I am not satisfied that the landlord has established when rent was paid late or that the landlord hasn't waived reliance on historical payments.

I have also reviewed the tenant's evidentiary material, which includes a message from the landlord to all tenants indicating that all tenants should pay a portion of the hydro bill. I am not satisfied that the landlord has established that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

With respect to the final reason for issuing the One Month Notice to End Tenancy for Cause: Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit or property, the landlord indicated that the tenant obtained a cat. Firstly, the tenant has provided proof that the landlord was aware of the cat and did not request a pet damage deposit. Further, that has absolutely nothing to do with the reason for issuing the Notice.

I am also concerned that the landlord has provided an unsigned copy of the One Month Notice to End Tenancy for Cause which differs from the copy served to the tenant and provided for this hearing by the tenant.

In the circumstances, I am not satisfied that the landlord has established any of the reasons for issuing the One Month Notice to End Tenancy for Cause, and I cancel it.

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

With respect to the tenant's application that the landlord return the tenant's personal property, the tenant requested reimbursement at the hearing for the cost of the ceramic pot, but has not provided any evidence of the cost, or that the landlord is responsible, or an application for reimbursement. Therefore, I dismiss the tenant's application that the landlord return the tenant's personal property without leave to reapply.

Since the tenant has been partially successful with the applications, the tenant is also entitled to recovery of the filing fees. The tenant paid \$100.00 for the first application and \$100.00 for the second application, and I grant a monetary order in favour of the tenant in the amount of \$200.00. I further order that the tenant may reduce rent for a future month by \$200.00 or may otherwise recover it by filing the monetary order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2022 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated March 31, 2022 is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00, and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: July 28, 2022

Residential Tenancy Branch