



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes **FFL, OPR, OPC, MNRL-S, OPN / CNR, OLC, RP, FFT**

Introduction

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

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- an order of possession for cause pursuant to section 55;
- an order of possession based on tenant’s written notice to end tenancy pursuant to section 55;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant acknowledged service of the landlord’s application for dispute resolution including all evidence before me. The landlord acknowledged service of the tenant’s application although it was incomplete, and it did not include any of the

evidence submitted by the tenant. The tenant could not explain when and how he served a copy of his evidence on the landlord. The landlord was advised that the tenant's evidence consisted mainly of e-mail correspondence between the parties which the landlord already would have been familiar with. The landlord was advised that he could object to any evidence he was not familiar with if it was raised by the tenant during the hearing. No issues arose with evidence submissions during the hearing.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issues identified above which deal with a Notice to End Tenancy either from the landlord or the tenant, I am exercising my discretion to dismiss the remainder of the issues identified in both the landlord's and tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

The landlord also advised that the tenant paid rent in full after issuance of the 10 Day Notice and that rent has been paid in full to date so the request for an order of possession based on the 10 Day Notice and request for monetary compensation for unpaid rent was moot.

Issues

Is the landlord entitled to an order of possession either based upon a Tenant's Notice to End Tenancy or based upon the One Month Notice?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on April 15, 2020 and is for fixed term ending August 31, 2023. The monthly rent is \$3500.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1750.00 at the start of the tenancy.

The landlord testified that on May 28, 2022, the tenant provided written notice to end the tenancy effective July 15, 2022. A copy of the written notice was submitted as evidence

by both the parties. The written notice is signed and dated by the tenant, indicates the address of the rental unit and states the effective date of the notice.

The landlord testified that the tenant served him with the above notice by e-mail and by registered mail. The landlord testified that the tenant subsequently failed to pay rent for the following month and therefore on June 2, 2022, the landlord served the tenant with a 10 Day Notice and a One Month Notice as he was repeatedly late paying rent. The landlord notes that the tenant's application to dispute the 10 Day Notice was filed late although he did subsequently pay the outstanding rent. The landlord notes that the tenant has also not applied to dispute the One Month Notice.

The tenant testified that in January of 2022 the landlord asked him to move out before the end of the fixed term date on the original lease. The tenant testified that as a result he asked the landlord to compensate him for one-month free rent and moving expenses. He e-mailed the landlord throughout the month of May 2022 to see if he would agree to the above, but he received no response. He then submitted his notice to vacate dated May 28, 2022. The tenant testified that he was not expecting the landlord to serve him with a 10 Day Notice for unpaid June rent and feels he was tricked by the landlord. The tenant subsequently cancelled his plans to vacate and did not vacate per the effective date of his own Notice.

The landlord testified that prior to the tenant issuing his own notice to end tenancy, he only casually asked the tenant to vacate and did not issue any formal Notice to End Tenancy. The landlord testified that he did so because the tenant was repeatedly late paying rent and was also disputing the utilities charges that he agreed to at the start of the tenancy. The landlord testified that he never agreed to compensate the tenant with one month free rent or for moving expenses.

Analysis

Pursuant to section 44 of the Act, a tenancy ends if a tenant gives notice to end the tenancy. Pursuant to section 55(2)(a) of the Act, a landlord may request an order of possession of a rental unit if a notice to end tenancy has been given by the tenant

I find the tenant gave the landlord a notice to end tenancy on his own free will. There was no evidence before me that the tenant was tricked or coerced into issuing the Notice. There was no evidence that the landlord offered or agreed to give the tenant one-month free rent in exchange for ending the lease early. The tenant cannot arbitrarily withdraw the Notice once it is issued. In fact, the email correspondence

submitted by the tenant confirm the landlord's position that he only asked to discuss ending the lease and at one point on May 28, 2022 the landlord even e-mailed the tenant and states that if the tenant would like to stay he does not want anymore complaints about expenses and rent being late. The e-mail correspondence also confirms that the tenant was well aware of his rights, specifically, that the lease could not be ended by the landlord before the end of the fixed term, but the tenant still proceeded to issue his own notice to vacate.

The notice given by the tenant was in compliance with the form and content requirements of section 52 of the Act. The written notice to end tenancy provided by the tenant stated an effective date of July 15, 2022. The landlord was entitled to possession of the rental unit effective this date.

The landlord is granted an Order of Possession pursuant to section 55 of the Act. As the tenant has since paid rent for August 2022, the effective date of the order of possession is August 31, 2022.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold a security deposit of \$1750.00. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

As the tenant was not successful in this application, the tenant is not entitled to recover his filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **August 31, 2022**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 12, 2022

Residential Tenancy Branch