



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNRL FFL / CNR

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;
- 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).

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

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

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

Background and Evidence

As per the lease on file, this tenancy began on May 15, 2016, with a monthly rent of \$800.00 payable on the 1st day of each month plus \$50.00 per month for parking. The landlord testified that as of March 1, 2022, he no longer required payment for the parking.

The landlord testified that he did not become aware of the tenancy until March 2022 and the first rent he received from the tenant was in April of 2022. The landlord testified that he resides in Florida and that he has not been to Terrace, BC for over 20 years. He owns over 60 apartments and he had hired a manager R.P. to look after this one. The landlord testified that R.P. was stealing from him by advising him the apartment was half vacant while collecting cash from tenants on the side. The landlord testified that he never seen the above lease until it was sent to him by the tenant's advocate. The landlord testified that the lease was never signed by him and only the tenant. The landlord testified he only became of tenancy after being informed by another tenant in March 2022 after which he fired his manager.

The landlord testified that on June 13, 2022 the tenant was personally served with three separate 10 Day Notices. All three notices were dated June 13, 2022. The first was for unpaid rent in the amount of \$800.00 due March 1, 2022. The second was for unpaid rent in the amount of \$700.00 due April 1, 2022. The third for unpaid rent in the amount of \$700.00 due June 1, 2022.

Copies of all three of the above notices were submitted on file. The tenant applied to dispute all three notices. The landlord's application was also in relation to an order of possession and a monetary order based upon the above three notices. The landlord also submitted into evidence a 10 Day Notice dated August 9, 2022, for unpaid August rent. The landlord did not formally amend his application to request an order of possession based upon this latest notice. The tenant had also not amended her application to dispute this latest notice. The landlord made a verbal request in the hearing to amend his claim to include unpaid August 2022 rent.

The landlord testified the outstanding rent was not paid within 5 days of the three June 13, 2022, 10 Day Notices being served on the tenant. The landlord testified that the following remains outstanding; the full amount of \$800.00 for March 2022 rent, the full amount of \$700.00 form April 2022 rent and \$200.00 for June 2022 rent. The landlord testified that after issuing the notices he only received a payment of \$500.00 towards June 2022 rent. The landlord testified that rent for August 2022 remains outstanding.

The tenant acknowledged receipt of all three 10 Day Notices dated June 13, 2022, on this same date.

The tenant's advocate H.G. made the following submissions on behalf of the tenant:

- The lease is initialed by the manager R.P.
- A rent subsidy ledger from Terrace and District Community Services submitted into evidence shows that from June 3, 2020 a monthly amount of \$100.00 was being paid to the landlord.
- A copy of an auto-deposit receipt dated February 23, 2022 in the amount of \$1400.00 made to the account of the manager R.P. which was an advance payment for March 2022 and April 2022 rent. The balance of \$200.00 was paid through the subsidy and reflected in the rent subsidy ledger.
- Rent receipts for June 2022 rent dated May 31, 2022 in the amount of \$200.00 and June 17, 2022 in the amount of \$500.00 deposited directly to the landlord's account. H.G. submits that as per these receipts, the June 2022 rent was paid in full within 5 days of the 10 Day Notice being issued.
- The tenant's advocate refused to comment on the August 9, 2022 10 Day Notice and argued it was not subject to this dispute.

In reply, the landlord argued that his name only appears on the top of the rent subsidy ledger as he was just recently added to the account. The landlord acknowledges receipt of only the last two payments reflected on the ledger and submits that the rest went to his manager R.P. which he had no knowledge of.

Analysis

I am satisfied that the tenant was served with the three 10 Day Notices subject to this dispute on June 13, 2022.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the tenant has submitted sufficient evidence supporting rent has been paid in full as per the tenancy agreement for each of the months reflected in the 10 Day Notices dated June 13, 2022. I find that rent for March and April 2022 was paid in full prior to the 10 Day Notices being issued and this is supported by the rent subsidy ledger and the advance rent payment receipt dated February 23, 2022. I find the June 2022 rent was also paid in full within 5 days of the 10 Day Notice being received by the tenant. This is supported by the receipts dated May 31, 2022, and June 17, 2022, which reflects the monies being paid directly to the account of the landlord.

Much of the landlord's argument was that the bulk of these payments did not go to him but rather to his manger R.P. who was defrauding him. However, I find this was no fault of the tenant's or at least there was no evidence to suggest the tenant was complicit in the fraudulent scheme. I note that there also was no evidence submitted as to when the tenant was notified to no longer make payments to the manger or that the tenant continued to do so even after being notified.

Accordingly, all three 10 Day Notices dated June 13, 2022, are hereby cancelled and of no force or effect. The landlord is not entitled to an order of possession or a monetary award for unpaid rent based upon these Notices.

I make no ruling on the 10 Day Notice dated August 9, 2022 for unpaid August 2022 rent. I find that as neither party amended their application to seek an order based on this Notice, it was not subject to this dispute. I also find that as the landlord's previous 10 Day Notices have been cancelled it would not have been appropriate for me to allow the landlord's verbal amendment request to include a claim for unpaid rent based upon this latest Notice. I note that this Notice is dated only 6 days before the hearing date and depending on how and when the tenant received the Notice, the tenant's five-day window to pay or dispute the Notice may not yet have expired.

As the landlord was not successful in this application, the landlord is not entitled to recover the filing fee paid for this application.

Conclusion

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

I allow the tenant's application to cancel the landlord's three 10 Day Notices dated June 13, 2022, which are hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 16, 2022

Residential Tenancy Branch