



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, CNR, MNDCT, OLC, MNRT, FF

Introduction

This hearing convened to deal with the tenant's application and amended application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord, compensation for a monetary loss or other money owed, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, a monetary order for unpaid rent, and to recover the cost of the filing fee.

The tenant made a filing error, as the tenant did not receive a Four Month Notice, but rather the tenant received a 1 Month Notice.

The hearing convened on July 28, 2022, and due to the length of time taken for consideration of the 1 Month Notice, the hearing was adjourned in order to take up consideration of the 10 Day Notice.

An Interim Decision, dated July 28, 2022, was issued in this matter. The Interim Decision is incorporated herein by reference and should be read in conjunction with this Decision and procedural and preliminary matters were addressed.

The parties were ordered to file a copy of the 10 Day Notice prior to the reconvened hearing. Only the landlord complied with the order. In light of the tenant's failure to comply, the hearing proceeded on the copy provided by the landlord.

Both parties attended the reconvened hearing and were reminded that they were still affirmed for the continuation of the hearing.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

When I joined the teleconference hearing, there were two parties in attendance. The landlord announced himself; however, no other party spoke. The telephone line was then disconnected. This caller was the tenant, who called back right away. When first hearing from the tenant, I could not continue the hearing until the dog barking in the background stopped barking. Additionally, there was a wind noise on the line, making it hard to hear the tenant. It came to light the tenant was out walking his dog during the hearing.

During the hearing, the tenant was disconnected two more times, and immediately called back in.

Finally, after I began concluding the hearing, the tenant disconnected again after 33 minutes. As I had addressed all issues necessary for this hearing and heard from both parties at length, I concluded the hearing without waiting for the tenant to reconnect. The tenant had been repeating much of his testimony at that point.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support either the 10 Day Notice or the 1 Month Notice?

If so, is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

This tenancy began on October 1, 2019, between the landlord and this tenant and another tenant. The other tenant, LA, identified as the girlfriend of the tenant, has since vacated the rental unit. The parties signed a written tenancy agreement, for a start date of October 2, 2019, for a fixed-term through October 1, 2020. The tenant filed a partial copy of the tenancy agreement, the first page and half of the 2nd page.

The landlord and the tenant signed an additional written tenancy agreement, indicating a tenancy start date of February 1, 2021, for a fixed-term ending on January 31, 2022, and a monthly rent of \$3,150. The original tenant, LA, did not sign the new tenancy agreement.

The tenant submitted a document entitled, Addendum to Residential Tenancy Agreement, purporting to extend the tenancy to October 1, 2027, according to the tenant. This document was signed, but not dated and did not refer to which tenancy agreement it was attached, the original tenancy agreement or the subsequent tenancy agreement referred to directly above.

As stated, the matter of the 1 Month Notice was considered at the original hearing on July 28, 2022, and the 10 Day Notice at the reconvened hearing.

As to the 10 Day Notice, the landlord submitted that the tenant was served with the Notice by email on May 4, 2022. The tenant confirmed receiving the 10 Day Notice by email, which was the parties' preferred and consistent method of communication. The Notice was dated May 4, 2022, for an effective move-out date of May 15, 2022. The amount of unpaid rent listed on the Notice was \$6,300 owed by May 1, 2022. The landlord said that the amount listed was an accumulated rent deficiency.

The landlord submitted that since the Notice was issued, the tenant has not paid any further rent and as of the day of the reconvened hearing, the tenant owed a total rent deficiency of \$16,750 for 5 months of rent. I note the actual amount owed for 5 months unpaid rent at \$3,150 is \$15,750.

Tenant's response-

In response, the tenant confirmed he has not paid rent for the past 5 months, although he has the money available to pay. The tenant said that the parties had an agreement that the landlord would pay him for two months rent in connection with ending the tenancy by agreement. The tenant asserted that the landlord never paid him the two months or for their work and expenses in improving the rental unit.

The tenant asserted that if he did the work, the landlord guaranteed an extension of the tenancy for a fixed-term through October 2, 2027. The tenant referred to the Addendum.

The tenant said he is still waiting for monetary compensation.

Landlord's rebuttal –

The landlord's rebuttal to the tenant's assertion they are entitled to free rent was addressed at the original hearing. The landlord submitted that the parties had an agreement that if the tenants improved the property, he would pay for most of the work. The landlord submitted that he ended up paying for the entire kitchen installation and paid for the new carpet in full, but never received any part from the tenants, although it was their agreement they would pay for a small portion. In addition, the landlord submitted he did not pay for the painting, as he never received any invoices or evidence it was completed. The landlord submitted that the rental unit looks worse than before the tenancy and therefore, there was no agreement to extend the tenancy.

The landlord said that he had an agreement with the tenant that he would give the tenant 2 months of rent if the tenant agreed to move out of the rental unit after receiving the 1 Month Notice. Instead of signing a mutual agreement to end the tenancy, the tenant applied for dispute resolution, resulting in there being no agreement.

The landlord submitted that he continued throughout all this time reminding the tenant he had to pay rent.

The landlord agreed that the tenancy could be extended to August 29, 2022, and later said he wanted the tenant out by the end of the month.

Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was issued. Further, I find that he did not pay the rent owed to the landlord within five days of receiving the Notice, or at all.

In addressing the tenant's arguments, I find that the parties did not have an agreement to extend the tenancy on a fixed-term basis until October 1, 2027. I find the language used was vague and conditional upon several other terms being fulfilled, such as upgrades to the rental unit for which the tenant was required to pay a portion. The tenant submitted no evidence that the work was done or that they paid their portion, if so. I therefore find the Addendum was vague, unclear, conditional, and therefore, not enforceable.

I also find that the parties did not have an agreement that the tenant would be entitled to two months rent. The landlord disagreed there was a completed agreement, as the tenant failed to sign a mutual agreement, as negotiated.

For these reasons, I therefore find the landlord submitted sufficient evidence to support that on the day the 10 Day Notice was issued, the tenant owed the rent listed of \$6,300, and has failed to pay this amount or any further monthly rent. The tenant confirmed these facts himself. I find the 10 Day Notice must be upheld.

I therefore **dismiss** the tenant's application seeking cancellation of the 10 Day Notice, without leave to reapply. The tenancy is ending due to the tenant's failure to pay the monthly rent.

I order the tenancy ended on the effective date of the 10 Day Notice, or May 15, 2022, and the tenant has been overholding in the rental unit.

Given the above, pursuant to section 55(1) of the Act, I must grant an order of possession to the landlord.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable **on August 29, 2022, at 1:00 pm.**

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Monetary order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant did not pay the monthly rent listed on the Notice or any rent since the Notice. I find the tenant owes a total amount of unpaid rent of \$15,750 (5 months rent @ \$3,150 per month) through the date of the hearing.

Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Pursuant to section 55(1.1) of the Act, I order the tenant to pay the landlord the amount of \$15,750, which is the total amount of unpaid monthly rent owing as of the date of the hearing.

As a result, I grant the landlord a final, legally binding monetary order for the amount of \$15,750.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

As I have dismissed the tenant's application seeking cancellation of the 10 Day Notice, I dismiss without leave to reapply the tenant's request for an order for the landlord's compliance with the Act and his request for cancellation of the 1 Month Notice, as the tenancy is ending. I also dismiss the tenant's request for recovery of the cost of the filing fee, without leave to reapply.

I dismiss the tenant's monetary claim, with leave to reapply.

Conclusion

The tenant's application, apart from the tenant's monetary claim, is **dismissed, without leave to reapply**. The landlord has met the statutory requirements to end the tenancy and is granted an order of possession of the rental unit, effective **August 29, 2022, at 1:00 pm**.

The landlord is granted a monetary order in the amount of \$15,750 for a total amount of unpaid rent owed as of the date of the hearing.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 23, 2022

Residential Tenancy Branch