



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent.

The Tenant stated that on May 15, 2022 the Dispute Resolution Package was sent to the Landlord, via regular mail. The Landlord acknowledged receipt of these documents.

On May 12, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was delivered to the Landlord's front door on September 22, 2022. The Landlord stated that this evidence package was provided to her by the Residential Tenancy Branch on September 09, 2022 and by the Tenant on September 22, 2022. The Landlord stated that she has had sufficient time to consider the evidence and it was accepted as evidence for these proceedings.

On September 16, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the male Tenant, who is not named on this Application for Dispute Resolution, on September 16, 2022. The Tenant stated that she received this evidence from the male Tenant on September 16, 2022. The Tenant stated that she has had sufficient time to consider the evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to show the correct spelling of the Landlord's first name, as it was provided at the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began on December 01, 2014;
- The Tenant is currently required to pay monthly rent of \$1,200.00 by the first day of each month;
- No rent has been paid for January, February, June, July, August, or September of 2022;
- \$600.00 in rent was paid for April of 2022;
- \$600.00 in rent was paid for May of 2022;
- On May 09, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by May 20, 2022;
- There was a flood in the unit on January 12, 2022; and
- Repairs to the unit as a result of the flood were completed during the first part of March of 2022.

The Tenant stated that the Landlord told her and her co-tenant that they would not have to pay rent for January and February of 2022 as a result of the flood. The Landlord stated that no compensation for the flood was offered to the Tenant and she never agreed that rent was not due for January and February of 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent of \$1,200.00 by the first day of each month.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates 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. (Emphasis added)

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for January and February of 2022; that only \$600.00 in rent was paid for April of 2022, and only \$600.00 in rent was paid for May of 2022.

I find that the Tenant has failed to establish that she had the legal right to withhold any of the aforementioned rent. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that the Landlord excused her from paying rent in January and February of 2022 and by the Landlord's testimony that she did not excuse the Tenant from paying that rent. The burden of proving the Tenant has the right to withhold rent rests with the Tenant.

As the Tenant has failed to establish a right to withhold rent for January or February of 2022, I find that the Tenant remains obligated to pay \$2,400.00 in rent for those months. I find that the Tenant also remains obligated to pay \$1,200.00 in overdue rent for April and May of 2022.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Tenant did not pay all of the rent that was due by May 01, 2022, I find that the Landlord had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 09, 2022, which the Tenant acknowledged receiving on May 09, 2022.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenants have not paid the overdue rent that was due by May 01, 2022, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*. I find, pursuant to 68(2) of the *Act*, that the tenancy ends on September 30, 2022, and the Order of Possession will be effective on that date.

As the Tenant is legally entitled to remain in the rental unit until September 30, 2022, I find that the Tenant remains obligated to pay \$4,800.00 in rent for June, July, August, and September of 2022, which is currently outstanding.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an monetary Order, pursuant to section 55(1.1) of the *Act*, for unpaid rent, in the amount of \$8,400.00.

Conclusion

The application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on **September 30, 2022**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order for \$8,400.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 23, 2022

Residential Tenancy Branch