



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNR, OLC

Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

On June 11, 2022 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated June 3, 2022; and
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

On June 14, 2022 the landlord applied for:

- an order of possession, having served the 10 Day Notice;
- a monetary order for unpaid rent, having served the 10 Day Notice; and
- the filing fee.

The hearing was attended by the tenant and the landlord's agent ("the landlord"). They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties each confirmed receipt of the other's materials regarding the hearing.

Preliminary Matters

I confirmed with the landlord that their legal business name is as noted on the cover page of this decision.

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed, with leave to reapply, the tenant's claim for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession, and/or a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began September 1, 2019; rent is \$1,179.75, due on the first of the month, and the tenant paid a security deposit of \$575.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated June 3, 2022, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenants failed to pay rent in the amount of \$1,025.00 due on June 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by placing it in the mailbox on June 3, 2022. The tenant testified he received the Notice on June 6, 2022.

The landlord testified that the tenant paid \$179.75 in rent on June 1, 2022, and that is why the Notice is for \$1,025.00, and not the full rent. The landlord submitted that the tenant thought the Notice should be for \$1,000.00. The landlord testified that the tenant now has an additional parking space, which is \$25.00 a month. The landlord testified that there was a misunderstanding, and that the tenant had thought he could use the

extra parking space for free, and that is where the \$25.00 discrepancy comes from. The landlord testified that they clarified the issue with the tenant, and that he now understands that he must pay for the extra parking spot.

The landlord testified that on June 27, 2022, the tenant paid the remaining \$1,000.00 rent owing for the month, and was given a receipt for use and occupancy only.

The tenant testified that when he asked for an additional parking spot there was no mention of a fee for it.

The tenant testified that he agreed with the landlord's testimony that he paid \$179.75 in rent on June 1, 2022. The tenant testified this was a clerical error. The tenant testified that after receiving the 10 Day Notice, he did not pay the outstanding rent as he thought there was an error in the rent amount on the Notice, and that the issue should be resolved before he paid rent. The tenant testified that the Notice stated that he owed \$1,025.00, with no mention of where the extra \$25.00 came from. The tenant testified that he withheld rent and applied for dispute resolution, later deciding at the end of the month to pay the outstanding \$1,000.00.

The tenant submitted that the notice is faulty as the rent amount owing is wrong.

The tenant testified that he was not able to communicate with the landlord regarding the issue.

The landlord testified that the tenant could have contacted her, because he had her cell number and the landlord's office telephone number.

Analysis

Section 46(1) of the Act states:

46 (1) 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.

Section 46(2) requires that a notice under that section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

...

- (e) when given by a landlord, be in the approved form.

Based on the testimony of the parties, I find the 10 Day Notice was served on the tenant on June 3, 2022, in accordance with section 88 of the Act, and that it was received by the tenant on June 6, 2022.

I find that the 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the Notice, states the reason for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant did not pay rent owing on June 1, 2022 in the amount of \$1,025.00.

The parties agreed there was a miscommunication regarding the cost for the tenant to have a second parking space. The amount in question is \$25.00. The tenant testified that after paying \$179.75 in rent on June 1, 2022, he withheld paying further rent as he felt it should first be resolved whether the rent amount owing was \$1,000.00 or \$1,025.00, then decided at the end of the month to pay the landlord an additional \$1,000.00.

The tenant has submitted that the Notice is faulty as the rent amount owing is wrong. I disagree that any error in the amount of rent owing on the Notice renders it ineffective, because the notice states a reason for ending the tenancy, as required by section 52. Regarding the \$25.00 discrepancy, the tenant could have contacted the landlord for clarification, or paid the amount on the notice, having applied for dispute resolution.

As the parties agreed that rent is \$1,179.75, due on the first of the month, and that the tenant paid \$179.75 on June 1, 2022 and \$1,000.00 on June 27, 2022, I find the tenant

failed to pay rent on the day it was due, as required by the tenancy agreement and the Act.

Therefore, I dismiss the tenants' application for an order cancelling the 10 Day Notice, and uphold the landlord's Notice. I find that the landlord is entitled to an order of possession in accordance with section 55.

As the landlord testified that the tenant paid rent in full for June 2022, I dismiss the landlord's application for a monetary order for unpaid rent.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the amount owing.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession which will be effective November 30, 2022 at 1:00 p.m. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is authorized to retain \$100.00 of the tenant's security deposit.

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: November 08, 2022

Residential Tenancy Branch