



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, OLC, LRE
MNR-DR, OPR-DR, OPL, MNDCL, MNRL, FFL

Introduction

This hearing dealt with two Applications for Dispute Resolution filed by the Tenant (the Tenant's Applications) under the *Residential Tenancy Act* (the Act) on June 6, 2022, and July 5, 2022, seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice);
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlords to comply with the Act, regulation, and/or tenancy agreement; and
- An order suspending or setting conditions on the Landlords' right to enter the rental unit.

This hearing also dealt with two Applications for Dispute Resolution filed by the Landlords (the Landlords' Applications) under the Act on July 18, 2022, seeking:

- An Order of Possession because they issued a 10 Day Notice and rent was not paid in the required time;
- Recovery of unpaid rent;
- An Order of Possession because they issued a Two Month Notice;
- Compensation for monetary loss or other money owed; and
- Recovery of both filing fees.

The hearing was convened by telephone conference call on October 18, 2022, at 11:00 A.M. (Pacific Time), and was attended by the Tenant and the Landlords, all of whom provided affirmed testimony. The parties acknowledged receipt of each other's Notices

of Dispute Resolution Proceeding (NODRP) and documentary evidence and stated that they had no concerns with regards to the service methods or dates. I therefore proceeded with the hearing as scheduled and accepted all of the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlords, a copy of the decision and any orders issued in their favor will be emailed to them at the email address listed in the Application and confirmed at the hearing. At the request of the Tenant, a copy of the decision and any orders issued in their favor will be made available to them for pick up at a service BC location.

Preliminary Matters

In their Applications the parties sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the parties both made applications in relation to the Two Month Notice and the 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end and the payment of rent. As the other claims are not sufficiently related to either notice to end tenancy or the amount of rent outstanding, if any, I exercise my discretion to dismiss the following claims with leave to reapply:

- An order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- The Landlords' claim for compensation for monetary loss or other money owed.

As a result, the hearing proceeded based only on the notices to end tenancy, the matter of unpaid rent, and recovery of the filing fees.

Issue(s) to be Decided

Is the Tenant entitled the cancellation of the 10 Day Notice, and if not, are the Landlords entitled to an Order of Possession and recovery of unpaid rent?

Is the Tenant entitled the cancellation of the Two Month Notice and if not, are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to recovery of either filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on April 1, 2018, that rent in the amount of \$2,000.00 is due on the first day of each month, and that a security deposit in the amount of \$1000.00, and a pet damage deposit in the amount of \$500.00 were required. At the hearing, the parties agreed that these terms are correct, that the above noted deposits were paid, that there have been no rent increases, and that the Landlords still hold the full \$1,500.00 in deposits in trust.

The Landlords stated that they served the Tenant with the Two Month Notice on June 2, 2022, and the Tenant confirmed receipt on that date. The Two Month Notice in the documentary evidence before me is on a 2021 version of the form, is signed and dated June 6, 2022, has an effective date of August 2, 2022, and states that the notice has been served because the Landlord or the Landlord's spouse intend in good faith to occupy the rental unit.

The Landlord V.B. stated that they got married in October of 2021, and moved out of their parents' home, which is located on a property adjacent to the property on which

the rental unit is located, but ultimately their mother was diagnosed with colon cancer, and they moved back home. V.B. pointed to part one of the documentary evidence before me which is a letter from their previous landlord in support of this testimony. V.B. stated that there are currently five people living in their parents two-bedroom home, and that their parents are sleeping on the couch. As a result, V.B. stated that they need to move into the rental unit so that their parents can move back into a bedroom while still being close to their mother who is undergoing cancer treatment. V.B. stated that they are in a very difficult situation in a tough rental market and simply need the home back for their own occupancy.

The Tenant called into question V.B.'s testimony that they moved back home to be closer to their mother and that they need the rental unit for their own use. The Tenant stated they have had endless problems with the house and their tenancy and that the Landlords stood at their door screaming at them. The Tenant stated that the Landlords accused them of illegally subletting the rental unit to their son, who the Tenant stated was on the original tenancy agreement, and that in any event their son moved out on April 1, 2019. The Tenant stated that they receive disability benefits, which the Landlords became aware of recently when they needed to receive additional benefits in order to stop an eviction for nonpayment of rent, and accused the Landlords of discriminating against them on the basis of their disability by issuing the notices to end tenancy. They stated that they believe that the notices to end tenancy were only issued because the Landlords are now aware that they are a person with disabilities, and that they think that the Landlords simply intend to re-rent the unit for more money.

The Landlords stated that when the Tenant did not pay rent in July as required, they served the Tenant with the 10 Day Notice on July 4, 2022, and the Tenant confirmed receipt on that date at the hearing. The 10 Day Notice in the documentary evidence before me is on a 2021 version of the form, is signed and dated July 4, 2022, has an effective date of July 14, 2022, and states that \$2,000.00 in rent that was due on July 1, 2022, is outstanding.

The Tenant argued that they were entitled to withhold rent for July of 2022 pursuant to section 51(1) of the Act as the Landlord served them with the Two Month Notice. In contrast, the Landlords argued that the Tenant was not entitled to withhold July 2022 rent because they had disputed the Two Month Notice by filing an application seeking its cancellation with the Residential Tenancy Branch (the Branch). The parties agreed that other than rent for July of 2022, all other rent has been paid in full.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that a tenancy to which the Act applies exists between the parties and that rent in the amount of \$2,000.00 is due on the first day of each month. I am also satisfied that the Tenant disputed the notices to end tenancy within the required time periods set out under the Act.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Section 51(1) of the Act also states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(1.1) goes on to say that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

Based on the above, I find that the Tenant had a right to withhold rent for July of 2022, pending the outcome of their Application seeking cancellation of the Two Month Notice, and that therefore the 10 Day Notice is invalid as rent for July of 2022 is considered to have been paid pursuant to section 51(1.1) of the Act unless or until the Two Month Notice is cancelled. I therefore grant the Tenant's Application seeking its cancellation and dismiss the Landlords' Applications seeking its enforcement without leave to reapply. Having made this finding, I will now turn to the matter of the Two Month Notice.

Section 49(3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Although the Tenant argued that the Two Month Notice was served on them because they are a person with disabilities, the Landlords denied this claim, which I find to be purely speculative in nature. As a result, I am not satisfied that the Two Month Notice was served on the basis of the Tenant's status as a person with disabilities.

Based on the Landlords' affirmed testimony, the letter from their previous landlord expressing the need for them to end that tenancy due to V.B.'s mother's health, documents showing that V.B. attempted to find alternate accommodation prior to giving

the Two Month Notice, a character reference from previous tenants, and photos and videos showing how small their current residence is, I find that the Landlords have satisfied me on a balance of probabilities that V.B., who is one of the property owners/landlords, intends in good faith to occupy the rental unit for residential purposes with their spouse. Although the Tenant also argued that the Two Month Notice was not served in good faith as the Landlords have ulterior motives for ending the tenancy, such as not wanting to make required repairs to the rental unit and wanting to re-rent it at a higher monthly rate, the Landlords denied these allegations and I find that the documentary evidence submitted by the Tenant, such as copies of communications with the Landlords about several issues, utility bills, and three photographs of the rental unit, fall significantly short of establishing the allegations made in light of the significant documentary evidence from the Landlords demonstrating to my satisfaction that V.B. and their spouse intend in good faith to occupy the rental unit.

Based on the above, I therefore dismiss the Tenant's Application seeking cancellation of the Two Month Notice without leave to reapply. As I am satisfied that the Two Month Notice complies with section 52 of the Act, I grant the Landlords' Application seeking its enforcement. As the effective date of the Two Month Notice has passed, and pursuant to sections 55(1) and 68(2)(a) of the Act, and Residential Tenancy Policy Guideline #54, I grant the Landlords an Order possession effective at 1:00 P.M. on November 30, 2022.

As the parties agreed that the only rent that remained unpaid as of the date and time of the hearing was rent for July of 2022, and I have already found above that the Two Month Notice is valid, I therefore find that the Tenant was entitled to withhold rent for July of 2022 pursuant to section 51(1) of the Act and I dismiss the Landlords' claim for the recovery of unpaid rent without leave to reapply.

As the Landlords were successful in only one of their Applications, and as the Landlords were entitled to amend one of the Applications at no additional cost rather than file two related applications, I therefore grant the Landlords recovery of only one of the filing fees pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act I therefore grant the Landlords a Monetary Order in the amount of \$100.00. In lieu of serving and enforcing this Monetary Order on the Tenant, the Landlords may retain this amount from the security deposit, should they wish to do so.

Conclusion

I grant the Tenant's Application seeking cancellation of the 10 Day Notice and dismiss the Landlords' Applications(s) seeking enforcement of the 10 Day Notice, without leave to reapply. I also dismiss the Landlords' Application(s) seeking recovery of unpaid rent without leave to reapply as I find there is no unpaid rent and that the Tenant was entitled to withhold July 2020 rent under section 55(1) of the Act.

Pursuant to section 55(1) and 68(2)(a) of the Act, I grant the Landlords an Order of Possession for the rental unit effective **1:00 P.M. on November 30, 2022**. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant or any occupants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlords a Monetary Order in the amount of **\$100.00**. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order on the Tenant, the Landlords may retain this amount from the security deposit, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 2, 2022

Residential Tenancy Branch