



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR-DR, MNR-DR, FFL
For the tenant: CNR CNL OLC LRE

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2022 (10 Day Notice), for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 30, 2022 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property.

The tenant, the former landlord (landlord) and an agent for the former landlord (agent) attended the teleconference hearing and were affirmed. The mother of the tenant, JC attended the hearing and confirmed they were a witness; however, was not called as a witness during the hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

Both parties confirmed receiving the application and documentary evidence from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the

evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Both parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. Any orders will be emailed to the appropriate party for service on the other party.

The filing fee for the tenant was waived for both tenant applications.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Should the 2 Month Notice be cancelled or upheld?
- Is the landlord entitled to unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence and reviewed during the hearing. The fixed-term tenancy began on October 31, 2020, and converted to a month-to-month tenancy after October 31, 2021. Monthly rent of \$1735 was due on the first day of each month and increased to \$1,761 as of May 1, 2022, by way of a formal, written Notice of Rent Increase form also submitted in evidence and confirmed by both parties during the hearing.

I first addressed the 2 Month Notice of which neither party provided a copy of the 2 Month Notice. The parties agreed that the 2 Month Notice was dated June 30, 2022 and listed an effective vacancy date as August 31, 2022. The agent testified that the reason the 2 Month Notice was issued was due to the purchasers, SSS and GKC (purchasers). The purchasers were not listed on any of the 3 applications before me and were not parties to the dispute as a result.

The agent confirmed that they did not submit in evidence the Contract of Purchase and Sale containing a request from the purchasers to serve the 2 Month Notice. The agent also failed to submit any evidence from the purchasers to confirm they wanted vacant possession of the rental unit upon the closing date of August 31, 2022. The only

document regarding August 2022 rent was to confirm that \$1,761 was received from the tenant and that the payment does not reinstate the tenancy when July 2022 rent was not paid.

Given that there were no written documents that support that the landlord was required to serve the 2 Month Notice on the tenant by way of a written request of the purchasers, I cancel the 2 Month Notice as a result, and it is of no force or effect. I find the landlord provided insufficient supporting evidence to support that the 2 Month Notice was required. Given the above, the tenancy does not end based on the 2 Month Notice.

I will now address the 10 Day Notice, the second page of which was not submitted in evidence. Both parties agreed that page two of the 10 Day Notice indicated that \$1,761 was due on July 1, 2022, and only \$900 was paid, leaving \$861 unpaid by the tenant. The tenant confirmed that they received the 10 Day Notice on July 3, 2022, based on their application before me. The tenant filed to dispute the 10 Day Notice on July 8, 2022. The effective vacancy date listed on the 10 Day Notice was July 17, 2022, which has passed.

The agent testified and the email submitted for August 2022 occupancy both confirm that payment for August was for use and occupancy and did not reinstate the tenancy. Furthermore, I have no testimony from the purchasers or documentary evidence before me that the purchasers wish to continue the tenancy and as a result, I will determine if the 10 Day Notice is valid and if so, grant the appropriate orders.

The tenant admitted that they did not pay the \$861 portion of July 2022 rent because they felt the landlord would not return their security deposit. The tenant also confirmed that they have not paid the \$861 portion since it was withheld back in July 2022. The tenant was advised that they do not have the authority to withhold rent for that purpose and that section 26 applies, which I will address in my analysis below.

The tenant continues to occupy the rental unit. The tenant confirmed that no money has been paid for December 2022 to the purchasers.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. The tenant confirmed that they did not pay \$861 of the \$1,761 rent for July 2022 as they felt the landlords would not return their security deposit. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) 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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

[emphasis added]

In the matter before me, the tenant provided no supporting evidence that they had any right under the Act to withhold the \$861 portion of July 2022 rent. In fact, as of the date of this hearing on December 1, 2022, the tenant confirmed that they still have not paid the \$861 amount. In addition, the parties confirmed that the 10 Day Notice complied with section 52 of the Act by confirming the details listed on the 10 Day Notice. As such, I find the 10 Day Notice is valid and that the tenancy ended lawfully on July 17, 2022, which was the effective vacancy date listed on the 10 Day Notice.

In addition, I find that there is insufficient evidence before me to support that the landlord or purchaser reinstated the tenancy since the 10 Day Notice was issued. Therefore, as the tenant continues to occupy the rental unit, I dismiss the tenant's application **without leave to reapply**, due to **insufficient evidence**. I uphold the 10 Day Notice as a valid notice under the Act.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I **must grant the landlord an order of possession**. Therefore, based on the above, I

grant the landlord an order of possession effective **two (2) days after service on the tenant.**

As the landlord's application had merit, I grant the landlord the recovery of their **\$100** filing fee pursuant to section 72 of the Act. Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$961**. This amount is comprised of \$861 rent owing for July 2022 plus the \$100 filing fee.

As the tenancy ended on July 17, 2022, I dismiss the remainder of the tenant's application without leave to reapply as they are no longer relevant given that the tenancy has ended.

Conclusion

The 2 Month Notice has been cancelled and is of no force or effect.

The 10 Day Notice is valid and has been upheld. The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenancy ended July 17, 2022. The tenant must be served with the order of possession and the order of possession may be then filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been granted a monetary order of \$961 as noted above. The tenant must be served with the monetary order and a demand letter before being enforced in the Provincial Court (Small Claims Division).

The tenant is cautioned that they can be held liable for all costs related to the enforcement of the monetary order and order of possession, including but not limited to court fees and bailiff costs.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 1, 2022