



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC CNR MNRT MNDCT OLC RP PSF LRE AAT FFT

Introduction

The tenant applied under the *Residential Tenancy Act* (Act) seeking remedy to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2022 (10 Day Notice), to cancel a 1 Month Notice to End Tenancy for Cause dated October 2, 2022 (1 Month Notice), for a monetary claim of \$2,016 for money owed, emergency repairs (electrician), for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for an order directing the landlord to provide services or facilities required, for an order to set limits on the landlord's right to enter the rental unit, site or property, for permission to change the rental unit locks and for the filing fee.

The tenant and the landlord attended the teleconference hearing. The hearing process was explained, and the parties were affirmed. The parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

As both parties confirmed having been served with evidence 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 and RTB Rules.

Preliminary and Procedural Matters

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated many matters of dispute on their application, the most urgent of which I find is to cancel the 10 Day Notice and 1 Month Notice. I find that not all the claims on the application sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and 1 Month Notice at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- If no, should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recover of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began in August 2022. Monthly rent is \$2,750 per month plus \$350 per month for utilities, the latter of which was amended from \$450 per month between the parties (amendment). That amendment was also submitted in evidence.

A copy of both the 10 Day Notice and 1 Month Notice were submitted in evidence and both were reviewed during the hearing. Regarding the 10 Day Notice, the tenant writes on their application that they received it October 3, 2022 attached to their door and filed their application on October 7, 2022 to dispute the 10 Day Notice. The 10 Day Notice is dated October 2, 2022. A full copy of the 10 Day Notice was submitted by the landlord and reviewed during the hearing. The 10 Day Notice is signed and dated and is on the correct form and indicates that \$2,750 was owing as of October 1, 2022, in addition to amounts related to unpaid utilities.

The landlord testified that the tenant did not pay rent until October 9, 2022. The tenant claims they paid the October 2022 rent on October 8, 2022 via e-transfer, however, the e-transfer document submitted by the landlord reads "October 9, 2022". As a result, the tenant was questioned if they sent the e-transfer payment (Payment) late on October 8, 2022 and the tenant confirmed they did send the Payment late at night on October 8, 2022.

Due to the Payment being dated beyond 5 days of October 3, 2022, I find that it was not necessary to consider any additional evidence or the 1 Month Notice, which I will address below.

The landlord confirmed that money has been paid for January 2023 use and occupancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – There is no dispute that the tenant received the 10 Day Notice on October 3, 2022. The tenant filed to dispute the 10 Day Notice on October 4, 2022. Section 26 of the Act requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the Act. The Payment was not made until dated October 9, 2022, which is supported by the e-transfer document from the landlord before me.

Section 46(4) of the Act states:

Landlord's notice: non-payment of rent

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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

[emphasis added]

In addition, the emergency repairs listed on the application for \$250 in electrical outlets, I find do not justify any rights under the Act to withhold any amount of rent. Therefore, I find that due to the landlord being paid on October 9, 2022, that the 10 Day Notice is valid as the tenant breached section 26 of the Act. I dismiss the tenant's application in full, without leave to reapply. I find the 10 Day Notice issued by the landlord to be **valid**

and is upheld as the tenant failed to pay full rent when it was due and had no authority under the Act to withhold rent.

Section 55(1) of the Act applies and states:

Order of possession for the landlord

55(1) 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**

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[emphasis added]

Pursuant to section 55 of the Act, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective January 31, 2023 at 1:00 p.m. This date has been used as the landlord confirmed that money has been paid for use and occupancy for January 2023.

I find the tenancy ended on October 13, 2022, pursuant to section 53, which automatically corrects the effective vacancy date from October 12, 2022 as the 10 Day Notice was not served until October 3, 2022.

The filing fee is not granted as the tenant's application has no merit.

I find I do not need to consider the 1 Month Notice as the tenancy ended based on the 10 Day Notice, which has an effective vacancy date that precedes the 1 Month Notice effective vacancy date.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice.

The tenancy ended on October 13, 2022.

The landlord is granted an order of possession effective January 31, 2023 at 1:00 p.m. This order must be served on the tenant and then may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

Should the tenant failed to comply with the order of possession, they are reminded that they can be held liable for all costs related to enforcement of the order of possession including court and bailiff costs.

The filing fee is not granted.

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: January 10, 2023

Residential Tenancy Branch