



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDCT, LRE, LAT, OLC
OPR, MNRL, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant and an application made by the landlord.

The tenant has applied for the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for cause;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenant to change the locks to the rental unit; and
- for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was assisted by a support person. The parties each gave affirmed testimony and were given the opportunity to question each other. The landlord's support person did not testify or take part in the hearing.

The tenant advised that all of the tenant's evidence was provided to the landlord, on October 21, 2022 and on December 23, 2022 and on February 1, 2023, however the tenant has not received any evidence from the landlord. The landlord advised that all evidence was provided to the tenant by posting it to the door on January 7, 2023.

The Rules of Procedure indicate that multiple applications contained in a single application must be related, and I found that the primary focus of the hearing deals with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Therefore, the only evidence that relates to this hearing is that Notice, which has also been provided by the tenant. Since the parties do not agree that all evidence has been provided to the other party, I decline to consider any of it except the Notice. I also found that the landlord's applications are related.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 19, 2022 was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 1, 2021 and reverted to a month-to-month tenancy after December 31, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 is payable on the 1st day of each month. On December 7, 2020 the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level of the home.

The landlord further testified that on October 19, 2022 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit, and a copy has been provided for this hearing by both parties. It is dated October 19, 2022 and contains an effective date of vacancy of October 30, 2022 for unpaid rent in the amount of \$1,000.00 that was due on October 1, 2022. The tenant did not pay the rent,

and has not paid any rent since; the tenant is currently in arrears of rent the sum of \$5,000.00 for the months of October, 2022 to February, 2023 inclusive.

The tenant testified that the tenant intended to pay rent, but the landlord served other notices. The tenant tried to resolve it, and got a bank draft for October's rent, however after 1 month of the landlord trying to kick the tenant out, the tenant refused to pay the rent.

The tenant further testified that the rental unit is an illegal suite.

The tenant agrees that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was received by the tenant on October 20, 2022 which was posted to the door of the rental unit.

Analysis

The tenant has provided a copy of a letter, or note, from the landlord ending the tenancy effective on November 30, 2022. Any notice to end a tenancy given by a landlord must be in the approved form. A note or letter is not an approved form, and I find that it is of no force or effect.

The *Residential Tenancy Act* requires a tenant to pay the rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. In this case, the tenant agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by posting it to the door of the rental unit, which was received on October 20, 2022. The *Act* specifies that documents served by posting to the door or other conspicuous place is deemed to have been served 3 days after posting, unless earlier received.

I have reviewed the Notice and I find that it is in the approved form and contains information required by law. The tenant does not dispute that rent has not been paid. Therefore, I dismiss the tenant's application to cancel the Notice.

The law also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The tenant must be served with the Order of Possession,

which may be enforced by filing the Order of Possession in the Supreme Court of British Columbia.

The tenant did not dispute that no rent has been paid to the landlord for the months of October, 2022 to February, 2023, and I grant a monetary order in favour of the landlord in the amount of \$5,000.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Since the tenancy is ending, I dismiss the tenant's applications for the following relief, without leave to reapply:

- the application for an order limiting or setting conditions on the landlord's right to enter the rental unit;
- the application for an order permitting the tenant to change the locks to the rental unit; and
- the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed without leave to reapply.

The tenant's application for an order allowing the tenant to change the locks to the rental unit is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,100.00.

This order is final and binding and may be enforced.

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: February 21, 2023

Residential Tenancy Branch