



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR MNDCT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2023 (10 Day Notice) and for a monetary claim of \$35,100. The filing fee was waived.

The tenant, the landlord, and counsel for the landlord, SC (counsel) attended the teleconference hearing. The tenant and the landlord were affirmed and both parties were permitted to ask questions. All parties, except counsel were affirmed. Counsel was not affirmed as counsel is an officer of the court.

The landlord confirmed that they received the application and had the 10 Day Notice before them. The landlord did not serve any documentary evidence in response to the tenant's application. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice at this proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply**.

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The parties agree that a fixed-term tenancy began on May 1, 2022 and is in effect until April 30, 2023. Monthly rent is \$5,700 per month and is due on the first day of each month.

A copy of the 10 Day Notice was submitted and indicates that \$5,700 was owed as of February 1, 2023. The 10 Day Notice is dated and signed and was dated February 6, 2023 with an effective vacancy date of February 16, 2023. Counsel submits that rent of \$5,700 remains owing for January, February and March of 2023.

There is no dispute that a leak from the roof of the rental home occurred on or about December 23, 2022 to December 24, 2022. The landlord claims that they have spent \$13,000 to repair the roof leak so far. The tenant claims that work to repair the water leak did not occur until January 2023 then stopped and did not start again until a couple of days before the hearing.

The tenant confirmed that no rent has been paid for January, February or March of 2023. The tenant was asked if they paid any contractors themselves to complete emergency repairs to the home and the tenant confirmed they did not. There was no evidence of any receipts from the tenant submitted in evidence.

Analysis

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

I have reviewed the 10 Day Notice and find it complies with section 52 [*form and content of notice to end tenancy*]. Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act. In the matter before me, there was no evidence that the tenant was granted permission to deduct rent or had paid contractors to make emergency repairs to the rental home.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the 10 Day Notice within five (5) days.

When a 10 Day Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent. I find that the parties have confirmed that \$5,700 is owing for January, February and March 2023 rent and that there was no authority under the Act to refuse payment as section 26 of the Act requires the payment.

Order of Possession -

Upon hearing from the parties, for the reasons already given, I find that the tenant owed the landlord rent when the 10 Day Notice was issued and that the tenant failed to pay the \$5,700 amount owing within 5 days of February 6, 2023. The effective vacancy date listed on the 10 Day Notice was February 16, 2023, which has passed. I therefore find the landlord submitted sufficient evidence to support the 10 Day Notice. As a result, I find the tenancy has ended for the tenant's failure to pay rent owed and the landlord is entitled to gain possession of the rental unit.

I therefore **dismiss** the tenant's application seeking cancellation of the 10 Day Notice. The tenant ought to have paid the monthly rent, as they did earlier in the tenancy.

I find the tenancy ended on February 16, 2023, the effective date of the 10 Day Notice. As the tenant failed to vacate the rental unit, I grant the landlord an order of possession for the rental unit effective **March 20, 2023 at 1:00PM**, as no money has been paid for January, February or March 2023, pursuant to section 55(1)(b) of the Act.

Monetary order –

I find the parties agreed that no rent of \$5,700 has been paid for January, February and March of 2023. Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[emphasis added]

Pursuant to section 55(1.1) of the Act, I make the following order:

I ORDER the tenant to pay the landlord the amount of \$17,100, which is \$5,700 owing for January, February and March of 2023 rent.

As a result, I grant the landlord a monetary order against the tenant for the amount of \$17,100 in unpaid rent arrears.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The tenancy ended on February 16, 2023.

The portion of the tenants' application that was severed, is dismissed with leave to reapply.

The landlord has been granted an order of possession of the rental unit effective March 20, 2023 at 1:00PM, which must be served on the tenant by the landlord. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord is granted a monetary order in the amount of \$17,100 comprised of unpaid rent owed as noted above. This order must be served on the tenant by the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned that costs of enforcing either order, including bailiff fees and court costs, are recoverable from the tenant.

The decision will be emailed to the tenant and landlord.

The orders will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, except as 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: March 13, 2023

Residential Tenancy Branch