



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, LAT, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 10 April [the '10-day Notice'].
2. Suspension of landlords' right to enter the rental unit [the 'Entry Claim'].
3. Authorization for the tenants to change the locks to the unit [the 'Locks Claim'].
4. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 29 May 2023. The tenants also appeared.

Preliminary Matter: Severance of Claims

I dismiss the Entry Claim and the Locks Claim.

Rule 2.3 of the RTBs Rules of Procedure stipulates that, 'Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.'

In light of this rule, I asked the tenants how the Entry Claim and the Locks Claim were related to the Notice. The conceded that neither claim is related to the Notice.

Because of this concession, I dismiss the Entry Claim and the Locks Claim without leave to re-apply.

Preliminary Matter: Refusal to Consider Tenants' Document

During the hearing the tenants wanted me to review a document, which they referred to as their 'affidavit'. They had submitted this document to the RTB the day before this hearing – well after the deadline to submit such documents imposed by rule 3.14 of the RTBs Rules of Procedure.

The landlords objected to me reviewing this document, saying that the tenants did not provide a copy of it to them until the night before this hearing.

I decided that, *per* rule 3.17 of the Rules of Procedure, I would not review this document as to do so would unreasonably prejudice the landlords, who had only received a copy of it the night before the hearing. Furthermore, if the document were indeed an affidavit of the tenants, then there was nothing preventing the tenants from testifying in the hearing to what they had testified in the affidavit.

In response, the tenants said that they would 'appeal' this decision. While there is strictly no 'appeal' of a decision of the Director, for the benefit of the tenants, I include below information from the RTB Website regarding judicial reviews.

"A landlord or tenant can apply to the Supreme Court of British Columbia to set aside a decision that contains an error of fact or law or that is procedurally unfair... Follow these steps to apply for judicial review:

1. It's best to seek legal advice before applying for a judicial review by the Supreme Court of British Columbia...
2. File a petition at the Supreme Court Registry
3. Serve the petition and supporting documents on the other party to your dispute.
4. Serve the petition and supporting documents on the Director of the Residential Tenancy Branch and the Attorney General (together)...

There is a 60 day time limit for applying for a judicial review, although this time limit may be extended by the court."

Issue to be Decided

Having severed the Entry Claim and the Locks Claim, I am left with one question to answer:

Did the Notice end this tenancy?

As detailed below, answering this question really turns on the issue of whether the tenants paid rent for September 2022.

Background and Evidence

This tenancy began on 1 May last year.

The parties agreed that rent is \$1,300.00 *per* month, due on the first day of each month. The practice of the parties was for the tenants to pay rent in cash, and the landlords to issue receipts for these payments.

On 31 August last year, the landlords wrote to the tenants saying that they must move out of the unit by 31 October 2022 so that the landlords' daughter could move into the unit. The tenants objected, saying that the landlords must use a proper RTB form for such a notice.

The next day, 1 September, the landlords duly drafted a Two-month Notice to End Tenancy, using an RTB form and citing as cause a close family member to occupy the unit [the 'Two-month Notice'].

Then the landlords told me that the tenants didn't pay rent for September. And then they didn't pay rent for October, either.

The tenants said that while they did pay rent for September, they concede that they may not have paid rent for October.

The landlords said that over the coming months, the tenants kept reassuring the landlords that they would move out as a result of the Two-month Notice. But, after months of not doing so, the landlords decided to insist upon payment of the rent from September and October. Accordingly, the landlords drafted the 10-day Notice.

In drafting the 10-day Notice, the landlords told me that they:

1. used the form approved by the RTB;

2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 20 April 2023; and
5. stated the basis for the Notice as the Applicant's failure to pay rent in the amount of \$2,600.00 for the months of September and October 2022.

The tenants, in drafting this application, acknowledged receiving this 10-day Notice on 10 April.

In support of the 10-day Notice, the landlords submitted to the RTB on 3 May copies of a series of receipts that they said they issued for payments received from the tenants during this tenancy. The receipts are numbered 001 through 011. Receipt 001 was for \$650.00 for a 'damage deposit'. The remaining receipts are for rent payments.

Of significance, the landlords said, is that there are no receipts for September and October: receipt 005 is for August rent, and then receipt 006 is for November rent. But the number '006' for the November receipt has been altered. The landlords told me that they had corrected this number to show '006' after they discovered they had initially misnumbered it [the 'Corrected November Receipt'].

When the tenants filed this application, they also submitted to the RTB a copy of a receipt for November rent, numbered 004 [the 'Uncorrected November Receipt'].

Then on 26 May the tenants submitted to the RTB a document that they said is a copy of a receipt issued by the landlords, also numbered 006, for September rent [the '26-May Document'].

Analysis

I note that the tenants submitted the 26-May Document three days before this hearing – again, well past the deadline to submit documents. But the landlords did not object to me reviewing this document, and so I have not excluded it.

In making this analysis, I have considered:

- all the statements made by the parties;
- all the documents to which they referred me during this hearing and to which no objections were raised; and
- all the arguments made by the parties.

The landlords say that I should uphold the 10-day Notice because the tenants failed to pay rent for September and October. The landlords bear the burden of proving this to me on a balance of probabilities. And they tell me that their receipts help them meet that burden by corroborating their allegation.

For their part, the tenants argue that I should cancel the 10-day Notice because:

1. they did, in fact, pay rent for September; and
2. they were entitled to withhold rent for October in light of the Two-month Notice.

While the tenants acknowledge that the October rent is owing, they argue that is not a basis to end the tenancy because of the perceived right to withhold one month's rent arising from the issuance of the Two-month Notice. In other words, had the tenants abided by the Two-month Notice, then their last month at the unit would have been October, and they could have withheld rent for that month. They did not abide by that notice, and so they acknowledge they owe October's rent.

Parenthetically, I note that the tenants never explained why they had not paid rent for October since deciding to ignore the Two-month Notice and continue to live in the unit.

In any event, this concession focusses the dispute on the issue of whether the tenants paid rent for September. And this issue turns, in no small part, on the corroborating effect of the parties' documents.

Each party takes issue with the reliability of the other party's documents. The tenants say that I should not rely on the Corrected November Receipt, because the landlords altered it to show '006', rather than '004'.

And the landlords say that I should not rely on the 26-May Document because it is actually the Uncorrected November Receipt, which the tenants have doctored so as to appear to be a receipt for September rent.

It is important to note that neither document is proof in and of itself of rent having been paid or not paid. But, if I accept one of the documents as accurate, then it can corroborate the statements of a party about the payment or non-payment of rent.

I carefully reviewed both the 26-May Document, the Uncorrected November Receipt and the Corrected November Receipt.

It is apparent that the number on the Corrected November Receipt has been written over to show, '006'. I magnified the receipt, and accept that original number was, '004'. I am satisfied, based on the landlords' statements, that they mistakenly wrote 004, and then corrected this to 006.

But the tenants argue that this correction proves that two receipts have been left out of landlords' documents.

If this were the case, however, then presumably the number that the landlords would have written over would have been, '008', not, '004': the August receipt was 005; September would have been 006; October would have been 007; and then November would have been 008. And I see nothing about the Corrected November Receipt that suggests the number '008' has been altered to '006'. As noted above, it is apparent that the original number was, '004', corrected to '006'. Also, receipt 008 in the landlords' documents is clearly a receipt for rent paid for January.

I accept that the Corrected November Receipt is a receipt for rent the tenants paid for November.

I do not rely upon the 26-May Document. I compared this document with the Uncorrected November Receipt and am satisfied that the handwritten words that appear in both documents (*viz.* the tenants' name; 'THIRTEEN HUNDRED ONLY.'; and 'RENT') are too similar for me to accept that these are different documents. The location of the landlords' signature, too, is indistinguishable between both documents.

I have examined the consistency of the landlords' story with the probabilities that surround the conditions of this case. I find their story in harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in the circumstances of this dispute [*per Bray Holdings Ltd. v. Black*, 2000 BCSC 738, para. 24].

Specifically, I accept that the landlords' documents show a practice and pattern of consistently issuing receipts when receiving payments from the tenants. I find, therefore, that it is probable that the landlords would have issued a receipt for September's rent if they had received that rent. But the landlords have no record of having issued such a receipt.

Furthermore, there is no receipt for October's rent either, and the tenants concede that they did not pay this rent. This fact also supports the notion that when no rent was paid, the landlords did not issue a receipt. And this is in turn supported by the sequence of the receipts that the landlords have submitted: August is 005; November is (corrected to) 006; December is 007; *etc.* In other words, the sequencing of the receipts is consistent with the landlords not receiving rent payments for September and October.

I also find the timing of the non-payment of rent consistent with an aggrieved (but misguided) party being notified of the end of the tenancy: the landlords issued the Two-month Notice on 1 September; and then, in response, the tenants refused to pay rent for that month and the next.

Based on the above, the landlords have met their burden to prove that the tenants probably did not pay rent for September.

Section 26 (1) of the *Residential Tenancy Act* [the 'Act'] places a positive obligation upon the tenants to pay rent, with which the tenants failed to comply for September (and October). As a result, I uphold the 10-day Notice and find that the tenancy is at an end, effective 20 April 2023.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay to the landlords \$2,600.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' security deposit of \$650.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 8 June 2023

Residential Tenancy Branch