



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities, an order limiting or setting conditions on the landlord's right to enter the rental unit, and to recover the filing fee from the landlord for the cost of the application.

The hearing was originally scheduled for November 2, 2023, during which both parties gave affirmed testimony, and were given the opportunity to question each other. Due to issues regarding evidence, I adjourned the hearing to November 8, 2023 and allowed both parties to provide further evidence and to deliver any further evidence to each other. My Interim Decision was provided to the parties on November 2, 2023.

On November 8, 2023 the tenant and the landlord attended the hearing, and each gave submissions. The landlord submitted that none of the landlord's additional evidence has been provided to the tenant. Therefore, I decline to consider it. The tenant submitted that the tenant's evidence was provided to the landlord by email on November 7, 2023. The landlord had not checked her email, but did so during the hearing. Since my Interim Decision did not specify a time limit or method for the exchange of evidence, Section 88 of the *Residential Tenancy Act* applies:

8 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (j) by any other means of service provided for in the regulations.

The regulations state:

43 (1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

There is no evidence before me that the landlord has provided an email address for service of documents. The tenant no doubt has an email address for the landlord, but the landlord has not provided it to the tenant as an “address for service.” Therefore, I decline to consider the tenant’s additional evidence.

All evidence of the parties that was properly served prior to November 2, 2023 has been reviewed and the evidence I find relevant to the tenant’s application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord's right to enter the rental unit should be suspended or allowed conditionally?

Background and Evidence

The landlord testified that this fixed-term tenancy began on October 1, 2021 and reverted to a month-to-month tenancy after October 1, 2022, and the tenant still resides in the rental unit. Rent in the amount of \$2,500.00 is payable on the 1st day of each month. The tenancy actually began on October 1, 2019 for the same amount of rent, at which time the landlord collected a security deposit from the tenant in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord. The rental unit is a single family dwelling. A copy of the "most recent" tenancy agreement has been provided by the landlord for this hearing, which shows that water, electricity and heat are included in the rent.

On September 19, 2023 the landlord served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by taping it to the door of the rental unit. A copy has been provided by the tenant for this hearing and it is dated September 19, 2023 and contains an effective date of vacancy of September 30, 2023 for unpaid rent in the amount of \$9,000.00 that was due on September 1, 2023.

The landlord further testified that the following rent cheques received from the tenant were returned for insufficient funds:

- July 12, 2022 \$1,800.00;
- \$800.00 on August 19, 2022;
- September 12, 2022 \$1,800.00;
- \$900.00 and \$1,200.00 on November 19, 2023;
- January 16, 2023 \$1,500.00;
- February 9, 2023 \$2,500.00;
- March 4, 2023 \$2,500.00;
- May 4, 2023 \$2,500.00;
- August 4, 2023 \$2,500.00; and
- September 7, 2023 \$2,500.00.

On July 25, 2023 the tenant paid \$10,000.00 by bank draft, as well as \$4,000.00 on May 19, 2023. No rent has been paid for October or November, 2023. The tenant is currently in arrears of rent the sum of \$9,000.00.

The tenant testified that the tenant was trying to figure out exactly how much was owed to the landlord; the amounts differentiated. The tenant acknowledges that the tenant owes money to the landlord, but not the amount the landlord is claiming. As of September, 2023, the tenant owes \$6,800.00 in addition to rent for October and November, 2023. However, the landlord owes the tenant \$4,800.00 for electric bills.

The tenant also testified that the landlord and her son entered onto the rental property without authorization or notice to the tenant. The tenant seeks an order limiting or setting conditions on the landlord's right to enter the rental unit for the safety of the tenant, the safety of the tenant's dog and the tenant's property.

SUBMISSIONS OF THE LANDLORD:

The landlord disagrees with the allegation of entering the rental home. The tenant owes rent to the landlord, and the landlord seeks an order of possession and a monetary order for the unpaid rent.

SUBMISSIONS OF THE TENANT:

The tenant agrees that rent is over due, but the landlord also owes the tenant money for utilities.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*.

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under a tenancy agreement. Once served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent or dispute the Notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the Notice was served on September 19, 2023 by taping it to the door of the rental unit, which is deemed to have been served 3 days later, or September 22, 2023. The tenant disputed it on September 19, 2023, the same day it was taped to the door.

The landlord gave a description with dates of several rent cheques that were returned for insufficient funds. I have added those amounts, which equal \$20,500.00. The parties agree that the tenant paid \$14,000.00 which leaves a balance due of \$6,500.00. The tenant has not paid any rent for October or November, 2023, which is an additional \$5,000.00, for a total of \$11,500.00.

The tenant's position is that water, electricity and heat are included in the rent, and the tenant has been paying those bills. The tenant has provided a list, however having found that the tenant has not properly served the additional evidence to the landlord, I decline to consider it. Regardless, the tenant agrees that there are rental arrears. The tenant has not paid rent when it is due, and therefore, I dismiss the tenant's application to cancel the Notice.

The *Act* also states 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 filed in the Supreme Court of British Columbia for enforcement.

The *Act* also states that if the tenant's application to cancel a Notice given by a landlord for non-payment of rent, I must grant an order requiring the payment of the unpaid rent. Having found that the landlord has established a claim of \$11,500.00, I grant a monetary order in favour of the landlord in that amount. Since I have no evidence from the tenant that can be considered with respect to money owed to the tenant for hydro and gas, I cannot set-off the amounts. The tenant is at liberty to serve the landlord with an Application for Dispute Resolution to reclaim an appropriate amount from the landlord. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant has also applied for an order limiting or setting conditions of the landlord's right to enter the rental unit, testifying that the landlord and the landlord's son attended at the rental home without notice, which is disputed by the landlord. There is no evidence to substantiate that allegation, and I dismiss that portion of the tenant's application.

Since the tenant has not been successful with the application, the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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

I further 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 \$11,500.00.

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: November 08, 2023

Residential Tenancy Branch