



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, PSF, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by Legal Counsel.

At the commencement of the hearing I had indicated to the parties that the Rules or Procedure require that multiple applications contained in a single application must be related, and the hearing focused on a 10 Day Notice to End Tenancy For Unpaid Rent or utilities.

The landlord and the tenant each gave affirmed testimony and the parties, or Legal Counsel were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities 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*?

Background and Evidence

The landlord testified that there is no written tenancy agreement; the tenant moved into the rental unit once another tenant vacated. The tenancy began in November, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment, and the landlord does not reside on the property. No move-in condition inspection report was completed.

The landlord further testified that up until June, the tenant e-transferred \$450.00 to the landlord and a Society paid the other \$450.00. However no rent has been paid for July to November, 2023, leaving a balance outstanding of \$4,500.00.

On September 24, 2023 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated September 24, 2023 and contains an effective date of vacancy of October 4, 2023. The reason for issuing it states that the tenant failed to pay rent in the amount of \$2,700.00 that was due on September 1, 2023. The tenant's name on the document differs from the application, and the landlord referred me to a list of e-transfers from the tenant, which are in the name of the tenant that the landlord placed in the Notice.

The landlord seeks an order of possession and a monetary order in the amount of \$4,500.00.

The tenant testified that the tenant has mentioned over and over about the toilet lifting from the floor and asked for silicone. The tenant kept repeating that and kept getting promises.

It's been difficult to get the landlord's repair person to complete repairs, saying that the landlord tells him he's not allowed to. Due to mold the tenant's breathing has been affected who is still waiting to see a physician. Further, exterminating is not adequate, and the technician told the tenant that the entire building needs to be done; cockroaches are in the hallways, which are not exterminated.

The tenant agrees that arrears started to accumulate in July, 2023.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant has confirmed that rent has not been paid, and in addition to the amount stated in the Notice, 2 more months of rent need to be added to the amount owed, and the landlord should obtain an order of possession.

SUBMISSIONS OF THE TENANT:

None

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement.

Once served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), a tenant has 5 days to pay the rent in full or dispute the Notice. In this case, the tenant does not dispute that rent has not been paid for July, 2023 to November, 2023, which amounts to \$4,500.00. Therefore, I dismiss the tenant's application for an order cancelling 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. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, 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 law also states that if the Notice is in relation to unpaid rent, I may grant a monetary order in favour of the landlord for the unpaid rent. Therefore, I grant a monetary order in favour of the landlord as against the tenant in the amount of \$4,500.00. The tenant

must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

The hearing did not deal with the balance of the tenant's application. I dismiss the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement with leave to reapply.

Since the tenancy is ending, I dismiss the balance of the tenant's application without leave to reapply. Also, 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 for an order cancelling a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities is hereby dismissed 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 \$4,500.00.

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.

The balance of the tenant's application is hereby dismissed without leave to reapply.

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 07, 2023

Residential Tenancy Branch