



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was scheduled to convene at 11:00 a.m. on January 23, 2024 concerning an application made by the tenant seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on December 22, 2023 and has provided a Canada Post cash register receipt bearing that date and a tracking number. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

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 tenant testified that this month-to-month tenancy began on December 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 is payable on the 1st day of each month and there are no rental arrears; the landlord has never served

a Notice of Rent Increase. At the outset of the tenancy, the landlord at that time collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 2 floors. A copy of a portion of the tenancy agreement has been provided for this hearing.

The tenant further testified that on December 19, 2023 the landlord served the tenant personally with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice). A copy has been provided for this hearing by the tenant, and it is dated December 19, 2023 and contains no effective date of vacancy. The reason for issuing it states that the tenant failed to pay rent in the amount of \$900.00 that was due on December 1, 2023. The tenant does not know why the landlord issued it; the tenant paid \$850.00 on December 1, 2023. The tenant pays rent by e-transfer.

Prior to receiving the Notice, the landlord asked that rent be increased to \$1,500.00 per month, and the tenant explained that lots of stuff needed to be fixed in the bathroom. The landlord had the rental unit tested and discovered asbestos. After asking for more rent, the landlord left and returned with the Notice, but the tenant was not in arrears.

Analysis

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*, which can include the reason(s) for issuing it. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, with the exception of an effective date of vacancy; that portion of the form is blank. The law states that incorrect effective dates in a Notice are changed to the nearest date that complies with the law.

The landlord did not attend the hearing or provide any evidentiary material, and I found that the landlord has not established that the Notice was given in accordance with the *Act*, and I cancelled the Notice.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant may reduce rent for a future month by that amount, or may serve the order upon the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

At 11:26 a.m., after I had orally rendered my Decision, a person (PR) joined the call and advised that the landlord was “in the mountains” and would join. I advised the person that I had already rendered my Decision, and if rent remains unpaid, the landlord could issue a new notice to end the tenancy.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated December 19, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: January 23, 2024

Residential Tenancy Branch