



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ASSOCIATED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT
 OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for more time than prescribed to dispute a notice to end the tenancy.

The landlords have applied for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlords' application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all of the landlord's evidence has been provided to the tenant. The tenant has provided only a copy of a notice to end the tenancy, which has also been provided by the landlord. Therefore, all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted additional time to apply for an order cancelling a notice to end the tenancy?

- Have the landlords established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 1, 2023 and reverts to a month-to-month tenancy after April 30, 2024 and the tenant still resides in the rental unit. Rent in the amount of \$1,600.00 is payable on the 1st day of each month. On April 21, 2023 the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in a house, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$3,626.60. On January 19, 2024 the landlords served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by email and by posting a copy to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated January 19, 2024 and contains an effective date of vacancy of January 30, 2024 for unpaid rent in the amount of \$3,190.36 that was due on January 1, 2024 and unpaid utilities in the amount of \$129.87 following written demand on January 19, 2024.

The landlords have provided a Direct Request Worksheet showing the amounts of rent due and paid. It shows that:

- \$150.00 is owed for June 1, 2023;
- \$915.00 is owed for September, 2023, bringing the arrears to \$1,065;
- \$695.00 is owed for October, 2023, bringing the arrears to \$1,760;
- \$2,244.64 was paid in November, 2023, bringing the arrears down to \$1,15.36;
- \$475.00 is owed for December, 2023, bringing the arrears to \$1,590.36;
- No rent was paid for January, 2024, bringing the arrears to \$3,190.36.

The landlord's agent testified that since the Notice was issued, the tenant has made partial payments as follows:

- \$35.00 on February 2, 2024;

- \$40.00 on February 3, 2024;
- \$115.00 on February 6, 2024;
- \$120.00 on February 7, 2024;
- \$115.00 on February 8, 2024;
- \$220.00 on February 12, 2024; and
- \$700.00 on February 27, 2024, for a total of \$1,345.00.

All payments were made by e-transfer so receipts were not issued, nor did the landlords provide the tenant with any documentation indicating that the rent money was being received for use and occupancy only and did not serve to reinstate the tenancy.

The tenant had provided a payment schedule to the landlords in an effort to pay the arrears, but has not complied with the schedule.

The landlords claim \$3,190.36 which does not include utilities or recovery of the \$100.00 filing fee.

The tenant testified that the tenant was late filing the dispute because he was confident that he would find long-term rather than temporary employment, which he has now accomplished. The tenant is now gainfully employed and has the income to pay the arrears on a schedule that will be acceptable by the landlord.

Analysis

Firstly, I accept the undisputed testimony of the landlord's agent that the Notice was served by email and by attaching a copy to the door of the rental unit on January 19, 2024, which is deemed to have been served 3 days later, or January 22, 2024. The tenant had 5 days to dispute it or pay the rental arrears, or by January 27, 2024. The tenant made the Application for Dispute Resolution on January 30, 2024, 3 days after the deadline.

The tenant has applied for additional time to dispute it, and considering the efforts made by the tenant to pay toward the arrears, I find that more time should be permitted, and I so allow it.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. However, the Notice also states that the tenant failed to pay utilities in the amount of \$129.87 following written demand

on January 19, 2024. The Notice was issued on January 19, 2024, and the law permits a landlord to treat unpaid utilities the same as unpaid rent, but not until 30 days after the landlord gives the tenant a written demand for payment.

Also, where a landlord accepts rent money after the effective date of a notice to end the tenancy for unpaid rent, the landlord must put the tenant on notice that the money is being accepted for use and occupancy only and does not serve to reinstate the tenancy. That is often accomplished by writing a note on a receipt, or some other written notice. In this case, the landlord has continued to accept rent multiple times after the effective date of the Notice, and I find that the landlords have effectively reinstated the tenancy, and the landlords are not entitled to an order of possession. If rent remains unpaid, the landlord may serve another Notice.

With respect to the landlord's monetary claim, I find that the landlords have established unpaid rent in the amount of **\$3,190.36 for the arrears to January, 2024 and \$255.00 for February, for a total of \$3,445.36.**

I make no orders with respect to the unpaid utilities because the landlord must give the written demand and then may treat the unpaid utilities as unpaid rent.

Since both parties have been partially successful, I decline to order that either party recover the filing fees from the other.

I grant a monetary order in favour of the landlords as against the tenant in the amount of **\$3,445.36.** 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.

Conclusion

For the reasons set out above, the tenant is permitted the extra time required to dispute the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities.

The landlord's application for an order of possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,445.36.

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: March 01, 2024

Residential Tenancy Branch