



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR
 OPR, OPB, MNRL, FFL

Introduction

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

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord has applied for an order of possession for unpaid rent or utilities; an order of possession for breach of contract; a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application.

The tenant and the landlord attended the hearing. The landlord was represented at the hearing by an agent, who gave affirmed testimony. The tenant was assisted by an interpreter, who was affirmed to well and truly interpret the hearing from the English language to the tenant's Native language, and from the tenant's Native language to the English language to the best of the Interpreter's skill and ability. The tenant also gave affirmed testimony.

The parties did not agree that any evidence has been exchanged, however during the course of the hearing, I made a finding that all evidence had been exchanged, all of which 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*, or should it be cancelled?

- Has the landlord established that the tenant has breached a condition of the tenancy?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2017 and the tenant still resides in the rental unit. There is no written tenancy agreement, however the parties had agreed at the beginning of the tenancy to rent in the amount of \$800.00 per month, 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 \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that on April 3, 2024 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities and a copy has been provided by both parties for this hearing. It is dated April 3, 2024 and contains an effective date of vacancy of April 15, 2024 for unpaid rent in the amount of \$6,510.00 that was due on April 1, 2024 and unpaid utilities in the amount of \$0.00 following written demand on April 3, 2024.

The landlord increased the rent to \$830.00 effective on October 1, 2018 and then again to \$880.00 effective July 1, 2022, and again to \$930.00 effective July 1, 2023. The tenant has not paid rent for October to date. No notices of rent increase were given to the tenant, but the tenant agreed to the increase to \$930.00 per moth in a WeChat conversation.

The landlord seeks a monetary order for the unpaid rent of \$6,510.00 as well as \$170.00 for translation fees and recovery of the filing fee.

The tenant testified that because there is no written tenancy agreement, the tenant was not able to get BC Housing to provide some relief to the amount of rent payable. The tenant was willing to sign a contract.

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 10 Day Notice to

End Tenancy For Unpaid Rent or Utilities (the Notice), and I find that it is in the approved form and contains information required by the *Act*.

In this case, it seems that the landlord believes that if there is no written tenancy agreement, the landlord can increase rent as often as the landlord wants to, and in any amount that the landlord wants to. That is not the law. A landlord may only increase rent once per year, in the amounts set out in the regulations, unless the tenant agrees in writing. The landlord's agent also indicated that the tenant agreed in writing to the latest rent increase by way of a WeChat message. However, that is not an agreement in writing because there is no signature of the tenant. I accept the undisputed testimony of the landlord's agent that no Notice of Rent Increase was served to the tenant, also contrary to the law. Rent can only be increased by using the approved form.

I consider the undisputed testimony of the landlord that rent was increased effective October 1, 2018 to \$830.00, which is \$30.00 more than the landlord was entitled to collect. I find that the landlord collected \$1,320.00 more than the landlord was permitted to ($\$30.00 \times 44 \text{ months} = \$1,320.00$). The landlord increased rent again to \$880.00 effective July 1, 2022, and I find that the landlord collected \$80.00 per month from July 1, 2022 to June 30, 2023 for a total of \$960.00 that the landlord was not entitled to ($\$80.00 \times 12 = \960.00). The landlord also collected \$130.00 more than the landlord was entitled to from July 1, 2023 to September, 2023 for a total of \$390.00 ($\$130.00 \times 3 = \390.00). The total of overpayments amounts to \$2,670.00.

The Notice states that the tenant failed to pay rent in the amount of \$6,510.00 that was due on April 1, 2024, but considering the overpayments, I find that the tenant was in arrears of rent the sum of \$3,840.00 ($\$6,510.00 - \$2,670.00 = \$3,840.00$). Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law. I further order that rent remains at \$800.00 per month until it has been increased lawfully. In the event that rent remains unpaid, the landlord is at liberty to issue a new notice to end the tenancy.

In the circumstances, and having found that the tenant is in arrears of rent the sum of \$3,840.00, I grant a monetary order in favour of the landlord as against the tenant in that amount. 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 landlord has not satisfied me that the landlord should obtain an order of possession for breach of a contract, and I dismiss that portion of the landlord's application.

The landlord also claims \$170.00 for translation services and recovery of the \$100.00 filing fee. The *Residential Tenancy Act* provides for recovery of a filing fee upon success of an application, but not for the costs of service or preparing for a hearing.

Since both parties have been partially successful, I decline to order that the landlord recover the filing fee from the tenant.

Conclusion

For the reasons set out above, landlord's applications for an order of possession are hereby dismissed without leave to reapply.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated April 3, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further order that rent will remain at \$800.00 per month until it has increased in accordance with the *Residential Tenancy Act*.

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 \$3,840.00.

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: May 07, 2024

Residential Tenancy Branch