



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution (applications) under the *Residential Tenancy Act* (Act) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated May 2, 2024, for \$1,836.00 in unpaid rent; and
- cancellation of a 10 Day Notice dated May 23, 2024, for \$1,219.14 in unpaid utilities.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord acknowledged service of the Proceeding Package from the Tenant and raised no concerns about service. I therefore found them duly served in accordance with the Act.

Neither party raised concerns regarding service of the documentary evidence before me. I therefore found the parties duly served with it in accordance with the Act.

Preliminary Matters

Documentary evidence before me showed that there is an ongoing Judicial Review between the parties regarding a previous decision from the Residential Tenancy Branch (Branch). The parties could not agree on whether the court proceedings had concluded or a decision had been issued. However, they agreed that none of the following were at issue as part of that Judicial Review:

- the amount of rent due each month under the tenancy agreement;
- what day rent is due each month;
- whether utilities are owed to the Landlord by the Tenant under the tenancy agreement in addition to rent; or
- the amount of each type of utility owed.

As a result of the above, and given the matters before me in the current applications, I was satisfied that the substantive matters before the court on Judicial Review of a previous Branch Decision, whether concluded or not, are not substantially linked to the matters currently before me to decide. As a result, the hearing proceeded as scheduled and I accepted jurisdiction.

Issues to be Decided

Is the Tenant entitled to cancellation of both 10 Day Notices?

If not, is the Landlord entitled to an Order of Possession and recovery of unpaid rent?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenant sought cancellation of two different 10 Day Notices in their applications. The first 10 Day Notice is signed and dated May 2, 2024, has an effective date of May 12, 2024, and states that \$1,836.00 in rent was owed as of May 2, 2024. The Landlord stated that they posted this 10 Day Notice to the door of the rental unit on May 2, 2024. The Tenant acknowledged receipt three days later, on May 5, 2024.

The second 10 Day Notice is signed and dated May 23, 2024, has an effective date of June 3, 2024, and states that \$1,219.14 in outstanding utilities are owed, for which a demand letter was issued on May 21, 2024. The Landlord stated that this 10 Day Notice was posted to the door of the rental unit on May 26, 2024. The Tenant acknowledged receipt that same day.

The Tenant filed their first application seeking cancellation of the first 10 Day Notice on May 10, 2024, and their second application seeking cancellation of the second 10 Day Notice on May 29, 2024. The parties agreed that \$918.00 in rent was paid to the Landlord on either May 2, 2024, or May 3, 2024, and that no further rent has been paid. The Tenant stated that as the Landlord has served numerous notices to end tenancy on them, and will not refund them any rent paid in advance if the tenancy is ended earlier than the date they have paid rent up to, they withheld June rent pending the outcome of this hearing. Although the Tenant stated that they mailed the Landlord a cheque for the remaining May rent on May 17, 2024, no proof of this was submitted and the Landlord denied receipt as of the date of the hearing.

The Landlord stated that the Tenant has not paid hydro in six months and currently owes \$1,219.14 in outstanding hydro bills. Although the Landlord stated that they posted a demand letter for utilities and copies of the relevant utility bills to the door of the rental unit on May 6, 2024, the Tenant denied receipt. The Tenant also denied receipt of the bills directly from Hydro, despite the Landlord's claim that these bills are sent directly to the billing address, which is the rental unit.

Although the Tenant argued that as part of the Judicial Review, the Judge had ordered all aspects of the tenancy agreement suspended pending their decision, including the payment of rent and utilities, no proof of this was submitted. The Landlord also denied that this occurred.

There was some disagreement between the parties about whether a hydro deposit in the amount of \$500.00 had been paid, and if so, when. The Tenant stated that this was paid 12 years ago at the start of the tenancy in addition to the security deposit. The Landlord disagreed, stating that it was paid approximately 4 years ago because hydro had requested it. However, the Landlord acknowledged that it was ultimately not required by hydro and was instead retained by them as a security deposit. The Tenant denied any knowledge that this \$500.00 was retained as a security deposit and stated that they never consented to that.

The Landlord sought an Order of Possession as soon as possible if either of the 10 Day Notices are found to be valid, as the Tenant has not paid full rent in two months or any utilities in six months. In contrast, the Tenant sought until at least the end of the month, stating that they have lived there since 2012 and built a homestead, which will be difficult to pack-up in only a few days.

Analysis

Is the Tenant entitled to cancellation of both 10 Day Notices?

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The parties agreed at the hearing that rent in the amount of \$1,836.00 is due on the first day of each month. I accept this as fact. Although the Tenant provided their rationale for withholding ½ of May rent and all of June 2024 rent, their rationale does not amount to a right under the Act to deduct or withhold rent. Tenants cannot unilaterally decide how much rent is and when it is due, and cannot withhold rent simply because they believe

they may get evicted soon. While the Tenant also stated that the court ordered as part of a Judicial Review that the payment of rent and utilities are stayed pending their decision, the Landlord denied this and nothing was submitted by the Tenant to corroborate this. Additionally, I find it extremely unlikely that a judge would make such an order when the Tenant was permitted to remain in the rental unit and there was no dispute between the parties as part of the Judicial Review that:

- a tenancy under the Act exists between them;
- \$1,836.00 in rent is due on the first day of each month under the tenancy agreement; or
- utilities are owed in addition to rent.

As a result, I do not accept the Tenant's testimony that this occurred and find that rent and utilities continued to be owed as set out in the tenancy agreement and Act while the Tenant continued to reside in the rental unit awaiting the outcome of both the Judicial Review and this hearing. As a result, I find that \$1,836.00 in rent was due on May 1, 2024.

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

Based on the affirmed testimony of the parties, I accept that the 10 Day Notice dated May 2, 2024, was posted to the door of the rental unit on May 2, 2024, and received by the Tenant three days later, on May 5, 2024. As a result, I find that the Tenant disputed the 10 Day Notice on time, and therefore conclusive presumption under section 46(5) of the Act does not apply. However, as the Tenant paid only \$918.00 within the time period set out under section 46(4) of the Act, and I have already found that the Tenant did not have a right to withhold or deduct any rent for May or June 2024, I therefore dismiss their Application seeking cancellation of the first 10 Day Notice, without leave to reapply.

With regards to the second 10 Day Notice, I find one matter to be determinative. Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utilities as unpaid rent and may give a notice to end tenancy under this section.

At the hearing the Landlord provided affirmed testimony that the written demand to pay the \$1,219.14 in outstanding utilities set out on the second 10 Day Notice was posted to

the Tenant's door on May 6, 2024. While this date is different than the date noted on the 10 Day Notice for service of the demand, May 21, 2024, which is concerning in and of itself, neither date is 30 days prior to issuance of the second 10 Day Notice. Further to this, the Tenant denied receipt of the demand letter and copies of the utility bills from the Landlord. As a result, I find that even if I were satisfied by the Landlord that the utility bills and demand letter had been served, which I am not, the Landlord did not have authority under section 46(6) of the Act to treat the unpaid utilities as unpaid rent at the time the second 10 Day Notice was served. As a result, I grant the Tenant's application seeking its cancellation.

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

As set out above, I have dismissed the Tenant's Application seeking cancellation of the first 10 Day Notice dated May 2, 2024. Having reviewed this 10 Day Notice, I am satisfied that it complies with section 52 of the Act. As a result, I find that the Landlord is entitled to an Order of Possession.

The Landlord sought an end to the tenancy as soon as possible and the Tenant sought at least until the end of June 2024, to vacate. Pursuant to Residential Tenancy Policy Guideline (Guideline) 54, I have considered the respective positions of the parties, the length of the tenancy, which began in 2012, the point up to which rent has been paid, as well as the Tenant's position that it would be unreasonable for them to vacate quickly as they have built a homestead on property.

While I appreciate that this tenancy has been ongoing for quite some time, and that the Tenant has made the rental unit and property their home during that time, by their own admission they have not paid any rent for June. As a result, and given that there is also outstanding rent owed for May of 2024, I do not find it reasonable to give the Tenant a significant amount of time to vacate. Especially as the effective date of the first One Month Notice is long passed. However, I agree that the Tenant may need more than seven days to vacate and return the property to the Landlord in the required state of cleanliness and repair. As a result, I grant the Order of Possession for 1:00 P.M. on June 30, 2024, pursuant to sections 55(1) and 68(2)(a) of the Act.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent,

and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I have already found that the first 10 Day Notice complies with section 52 of the Act.

I therefore find the Landlord is entitled to recover unpaid rent up to the end of the tenancy, which is June 30, 2024, in the amount of \$2,729.59. This amount includes the \$918.00 in rent for May of 2024 that I am satisfied is still owed, plus full rent for June of 2024 in the amount of \$1,836.00.

Pursuant to section 67 of the Act, I therefore grant the Landlord a \$2,754.00 Monetary Order, and I order the Tenant to pay this amount to the Landlord.

As the Tenant's application seeking cancellation of the second 10 Day Notice was granted, and there is no application before me from the Landlord regarding outstanding utilities, I make no findings of fact about what utilities, if any, are currently owed. The Landlord remains at liberty to file their own application for dispute resolution about any outstanding utilities owed, should they wish to do so. This is not an extension of any statutory time limit.

Conclusion

The Tenant's application for cancellation of the second 10 Day Notice dated May 23, 2024, is granted. I therefore order that this notice is cancelled and of no force or effect.

The Tenants' Application for cancellation of the first 10 Day Notice is dismissed without leave to reapply.

Pursuant to sections 55(1) and 68(2)(a) of the Act, I grant an Order of Possession to the Landlord **effective at 1:00 P.M. on June 30, 2024, after service of this Order on the Tenant**. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant or anyone on the premises fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I also grant the Landlord a Monetary Order in the amount of **\$2,729.59** under sections 26, 55(1.1), and 67 of the Act for unpaid rent up to and including June 30, 2024. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended, or for any loss suffered by a new tenant if their occupancy of the rental unit is prevented or delayed due to the overholding.

Section 38(3) of the Act states that a landlord may retain from a deposit, which includes the original deposit amount and any interest accrued in accordance with the regulations, an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 10, 2024

Residential Tenancy Branch