



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC CNR DRI FFT LRE OLC PSF FFL MNRL-S OPC OPU**

Introduction

This hearing dealt with applications by both the landlord and the tenant pursuant to the Residential Tenancy Act ("Act").

The landlord applied for:

- An order of possession for unpaid rent and utilities pursuant to sections 46 and 55;
- An order of possession for cause pursuant to sections 47 and 55;
- Monetary compensation from the tenant for unpaid rent and/or utilities pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Recovery of the filing fee pursuant to section 72.

The tenant applied for:

- An order to cancel the landlord's 10 day notice for unpaid rent pursuant to section 46;
- An order to cancel the landlord's 1 month notice for cause pursuant to section 47;
- An order to dispute a rent increase pursuant to section 41;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70;
- An order that the landlord provide services or facilities required by the tenancy agreement or law pursuant to section 62;
- An order that the landlord comply with the Act, legislation or tenancy agreement pursuant to section 62; and
- Recovery of the filing fee pursuant to section 72.

Both parties attended the hearing. As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The landlord confirmed receipt of the tenant's application for dispute resolution. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Tenant's service of Evidence

The tenant testified that he did not serve the landlord with any documentary evidence. He testified that he believed that the evidence uploaded to the Residential Tenancy Branch would be accessible to the landlord electronically.

Residential Tenancy Branch Rules of Procedure ("Rules") Rule 3.1(d) indicates:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

As the tenant did not comply with Rule 3.1(d), the tenant's documentary evidence was excluded from the hearing.

Preliminary Issue – Tenant's Application

The tenant's application to dispute rent increase, restrict the landlord's right to enter the rental unit, comply with the Act, and provide services and facilities are not related to the issues of cancelling the landlord's 10 day notice or 1 month notice.

Rule 6.2 of the Rules allow the arbitrator to decline to hear other claims included in the application that are considered unrelated. At the commencement of the hearing, I exercised this discretion and dismissed these portions of the tenant's application. If the tenant is successful in cancelling both notices, leave is granted to reapply for these items.

Issue(s) to be Decided

Should the 10 day notice be cancelled?

Should the 1 Month notice for cause be cancelled?

Is the landlord entitled to a monetary order for unpaid rent and/or utilities?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant seeks to cancel a 10 day notice for unpaid rent issued on January 13, 2019 and a one month notice to end tenancy for cause (late rent) issued on January 2, 2019.

A copy of the 10 day notice was entered as evidence by the landlord. The effective (move-out) date on the 10 day notice is January 25, 2019.

The 10 day notice indicates the tenant has failed to pay:

- \$2726.26 INCL UTIL that was due on February 2, 2018; and
- \$2726.26 INCL RENT following written demand on February 2, 2018.

A copy of the one month notice, dated January 2, 2019 was entered as evidence by the landlord. The one month notice indicates an effective (move-out) date of February 1, 2019.

The reason for ending the tenancy on the notice reads:

- the tenant is repeatedly late paying rent.

The landlord testified that the parties appeared at a hearing before the Residential Tenancy Branch on January 19, 2018 whereby the parties reached a settlement agreement. A copy of the agreement and a monetary order were provided as evidence by the landlord. In the agreement, monthly rent was set at \$1,367.19 per month payable on the first day of each month. Additionally, a formula for calculating the tenant's monthly utilities payments was arrived at and recorded in the decision. Both parties agree that by February 1, 2018, monthly utilities would be \$70.20 per month, making monthly rent \$1,437.39, including utilities.

Arrears of rent and utilities prior to the decision date of January 23, 2018 were to be paid by the tenant as seven payments of \$700.00 each month from February 1, 2018 to August 1, 2018. To give effect to this, the landlord was given a monetary order in the (corrected) amount of \$4,876.26. The landlord testified that the tenant has been sporadic in making payments toward the arrears awarded in the monetary order and that as of the date of the 10 day notice, January 13, 2019, the tenant still had not paid \$2,726.26 of this outstanding amount. The landlord served the tenant with the 10 day notice for outstanding rent and utilities in an attempt to collect the remainder of the previously granted monetary order.

The landlord testified that rent and utilities, up to and including February 2019 are up to date and paid in full.

The landlord testified that although the tenant is up to date with rent and utilities, payments have been consistently late. Rent is due on the first day of each month. The tenant pays rent by e-transfer, copies of which were provided as evidence. The landlord also provided a spreadsheet indicating January rent was paid on January 2, 2019; December rent was paid on December 3, 2018; November rent was paid on November 2, 2018 and October rent was paid on October 5, 2018. The spreadsheet spans from February 2018 to January 2019 and indicates the tenant was late in paying rent each month throughout 2018. The tenant did not dispute the payment schedule depicted in the spreadsheet.

The landlord testified that he served the tenant with the one month notice to end tenancy for cause on January 2, 2019 by posting it to the door of the tenant's rental unit. The tenant testified that he has experienced personal struggles that required him to travel to Vancouver Island. A personal tragedy in July of 2018 made his situation worse and he continues to struggle to pay both the rent and the monetary order from the previous hearing. He experienced a loss of income in 2018 but it is getting better now.

Analysis – 10 day notice

While section 62 of the Act authorizes the director's delegate, an arbitrator, to determine disputes in relation to matters that arise under the Act or a tenancy agreement, it does not confer any authority to enforce its orders. Monetary orders are enforced through the Provincial (small claims) Court of British Columbia.

The landlord testified that he mistakenly believed he could enforce the previous arbitrator's monetary order by serving the tenant with another 10 day notice for outstanding rent and utilities. While the tenant was not up to date in making payments toward the previous arbitrator's monetary order, the tenant's rent and utilities were current when he was served with the landlord's 10 day notice on January 13, 2019.

Since the arrears from prior to the arbitrator's decision had already been adjudicated, they are ineligible to be used as a basis of a new 10 day notice seeking to end the tenancy. The landlord's 10 day notice is cancelled and of no force or effect.

Analysis – one month notice

The landlord testified that on January 2, 2019, he served the tenant with the one month notice to end tenancy for cause by posting it to the door of the tenant's rental unit. The reason for ending the tenancy is that the tenant is repeatedly late paying rent. I find that the tenant was deemed served with the one month notice on January 5, 2019, three days after posting to the tenant's door pursuant to sections 88 and 90 of the *Act*.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. In this case, the landlord must prove the tenant was late in paying his rent.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement. The tenant acknowledged the landlord's spreadsheet of payments indicating he was late paying rent every month of 2018. Though he had his reasons for why it was late, those reasons do not alleviate his responsibility to pay the rent when it is due in accordance with section 26.

I find the landlord has proven the reason for issuing the one month notice, late payment of rent. Given this finding, the landlord is entitled to an order of possession. As the tenant has paid rent until the end of February, and in accordance with section 53 of the *Act*, the order of possession will be effective at 1:00 P.M. on February 28, 2019.

Landlord's application for unpaid rent and/or utilities

The landlord's application sought to collect the remainder of a monetary order that had previously been granted. As this issue has already been adjudicated, this application is dismissed. The landlord retains the right to enforce the previously issued monetary order through the Provincial (Small Claims) Court of British Columbia.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in partial satisfaction of the monetary award granted in his favour.

As the tenant's application was not successful the tenant will bear the cost of his application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 in the afternoon on February 28, 2019**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 21, 2019

Residential Tenancy Branch