



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEELINE TECHNOLOGIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR MT LRE PSF RP
Landlord: OPRM-DR FFL

Introduction

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

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- more time to apply to cancel a notice;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*;
- an Order for the landlord to provide services or facilities required by the tenancy agreement or legislation; and
- an Order for the landlord to perform regular repairs pursuant to section 62 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. Agents J.A., E.J. and M.B. attended on behalf of the corporate landlords and are herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's applications and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to the Applications for Dispute Resolution

At the outset of the hearing, the landlord provided clarification of the correct names for the two corporate landlords in this matter. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended both the tenant's and the landlord's applications to correctly name the two corporate landlords.

Preliminary Issue – Severing of Unrelated Claims

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's 10 Day Notice and the tenant's request for more time to apply to dispute the 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy, therefore, I find that the additional claims are not related to whether or not the tenancy continues. Therefore, all of the tenant's claims except for her applications to dispute the landlord's 10 Day Notice and for more time to dispute the notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue – Tenant's Request for More Time to Apply for Dispute

The tenant confirmed that she received the landlord's 10 Day Notice posted on her door on March 7, 2019. Section 46 of the *Act* provides that upon receipt of a 10 Day Notice to End Tenancy for Cause the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Details regarding the requirements for a tenant disputing a notice are provided on the first page of the 10 Day Notice form, as follows, in part:

Tenant: You may be EVICTED if you do not respond to this Notice. You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

The second page of the 10 Day Notice provides more details on filing an application to dispute the notice, and the timelines for doing so, as follows, in part:

INFORMATION FOR TENANTS

- You have the right to dispute this Notice within 5 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.*
- If you do not file an Application for Dispute Resolution within 5 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (you can move out sooner). If you do not file the Application or move out, your landlord can apply for an Order of Possession.*

The tenant submitted her application to dispute the 10 Day Notice on March 15, 2019, which is beyond the 5 days allowed under section 46 of the *Act*. However, the tenant's application included a request for more time to file an application to dispute the notice. The tenant explained that she was unable to file her application within the allowable time limit due to her current medical issues, specifically mental health issues including anxiety and depression. In support of the tenant's claim, she submitted into documentary evidence a copy of a "Medical Report – Employability" signed by the tenant's doctor confirming the tenant's claim that she suffers from severe anxiety and depression, with restrictions described as "poor concentration, low mood (no physical ones)". The tenant testified that in the past year, she has had to deal with the loss of both her father and her grandmother, which has exacerbated her mental health issues.

I explained to the tenant that requests for more time to file an application are only considered in "exceptional" circumstances. Residential Tenancy Policy Guideline 36. Extending a Time Period sets out the consideration for "exceptional" circumstances when an applicant seeks to extend a time limit provided by the *Act*, as follows, in part:

Exceptional Circumstances

*The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is **very strong and compelling**. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some **persuasive evidence to support the truthfulness of what is said**.*

...

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

...

[My emphasis added]

In this case, the tenant did not provide any testimony or submit any evidence to demonstrate that she was hospitalized or otherwise incapacitated in a way that prevented her from filing an application for dispute resolution during the dispute period or contacting another person to act on her behalf to do so.

Therefore, although I sympathize with the mental health issues and feelings of grief that the tenant experienced, the tenant's reasons do not meet the criteria of "exceptional" circumstances as explained in Policy Guideline 36, in order to obtain an extension of time to file a dispute. As such, the tenant's request for more time to apply to cancel the notice to end tenancy is dismissed.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began August 1, 2018 with a scheduled end date of July 31, 2019.
- Current monthly rent of \$1,500.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$735.00, which continues to be held by the landlord.

The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that the tenant pays her rent through preauthorized debit payments. The landlord testified that the tenant's rent payment for March 2019 of \$1,500.00 was returned due to insufficient funds on March 4, 2019. The landlord submitted a rent ledger into documentary evidence in support of his testimony.

The landlord served the tenant with a 10 Day Notice dated March 7, 2019 by posting it on the tenant's door that day. The tenant confirmed receipt of the 10 Day Notice on March 7, 2019.

Both parties submitted a copy of the 10 Day Notice into documentary evidence. The notice stated an effective date for vacancy of the rental unit of March 20, 2019.

The landlord testified that the tenant's rent payment for April 2019 was also returned due to insufficient funds, however on April 12, 2019, the tenant provided the landlord with a monetary order in the amount of \$1,500.00 for payment of April 2019 rent. The landlord confirmed that the tenant's rent payment receipt was noted as being for "use & occupancy only" and submitted a copy of the receipt into documentary evidence.

The tenant confirmed that she had not paid rent for March 2019 but that she paid rent for April 2019. The tenant testified that she fell behind in her rent as she was recently unable to work due to her mental health issues and that she was awaiting to have her disability claim addressed so that she would begin receiving financial assistance. In the tenant's documentary evidence, she referred to issues with the landlord in getting a replacement for one of the building front entrance keys which was not functioning.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Although the tenant explained that personal and financial difficulties impacted her ability to make her rent payment for March 2019, and that she felt the landlord had failed to respond in a timely manner to her request for a replacement of a faulty spare building entrance key, I do not find that there was sufficient evidence presented at the hearing that the tenant had a right under the *Act* to deduct all of the rent owed.

Therefore, based on the undisputed testimony of the parties regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$1,500.00, as established in the agreed upon tenancy agreement, and that the tenant failed to pay rent for the month of March 2019.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,500.00 for unpaid rent owing for the month of March 2019.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case, the tenant acknowledged receipt of the 10 Day Notice, posted to her door, on March 7, 2019. The tenant failed to dispute the notice within the time limits provided by section 46 of the *Act*. As explained earlier in this Decision, the tenant's application for more time to apply to dispute the notice was dismissed as the tenant failed to submit sufficient evidence to demonstrate that there were "exceptional" circumstances for failing to submit the application for dispute resolution on time.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,500.00 on the first day of the month, as established in their agreed upon written tenancy agreement. I also find, based on the undisputed testimony of the parties, that the tenant failed to pay all rent owed for March 2019 at the time the 10 Day Notice was issued and failed to pay all rent owed for March 2019 within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the rent owed or file an application for dispute resolution within five days led to the end of this tenancy on the effective vacancy date provided in the notice. In this case, this required the tenant to vacate the premises by March 20, 2019. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

The tenant's application to dispute the 10 Day Notice is dismissed.

As the landlord was successful in their application, the landlord may recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application to dispute the 10 Day Notice is dismissed.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. 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.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,600.00 in satisfaction of my finding that the landlord is entitled to a monetary award of \$1,500.00 for unpaid rent owing for the month of March 2019 and \$100.00 for the

recovery of the filing fee from the tenant. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders as soon as possible.

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 15, 2019

Residential Tenancy Branch