



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RP, CNR, OLC, OPR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenant attended the hearing with his advocate CR. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The tenant confirmed service of the 10 Day Notice, which was posted on the tenant's door on September 2, 2020. In accordance with section 88 and 90 of the *Act*, I find the tenant deemed served on September 5, 2020, 3 days after posting.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment as the tenant had made a freedom of information request for documents that relate to the payment of rent through income assistance, and which would take six to eight weeks to obtain.

The landlord opposed the application for an adjournment stating that the tenant has failed to pay rent since May 2020. The landlord testified that the tenant had ample opportunity to prepare for this hearing, and an adjournment would be extremely prejudicial to him. Both parties confirmed that the tenant's rent was paid through income assistance since 2014, but ended after the tenant gave notice that the tenant was moving. The landlord testified that as the tenant has not paid rent, an adjournment would not change the outcome of the hearing.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the *RTB Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I have considered the testimony and evidence before me, and I find that it was undisputed that the tenant's rent was originally paid through income assistance, which had stopped after the tenant had given notice that he had planned on moving. I find that the tenant had ample opportunity to prepare for this hearing, I am not satisfied that a six to eight week adjournment would necessarily result in a resolution of this matter. Furthermore, as this matter pertains to the matter of a significant amount of unpaid rent, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing.

The request for an adjournment was not granted. The hearing proceeded.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Is the tenant entitled to an order for the landlord to perform repairs?

Is the tenant entitled to an order for the landlord to comply with the Act?

Background and Evidence

This month-to-month tenancy began in May of 2014. The current monthly rent is set at \$550.00, payable on the first of every month. The landlord had originally collected a security deposit in the amount of \$250.00, \$200.00 of which was applied towards to March 2020 rent.

The landlord served the tenant with a 10 Day Notice to End Tenancy on September 2, 2020 for failing to pay rent for the months of May through to September 2020. The landlord testified that the tenant has not made any payments since the 10 Day Notice was issued. The landlord is requesting an Order of Possession for the tenant's failure to pay the monthly rent.

The tenant testified that the monthly rent has been paid through income assistance since 2014 until the tenant gave notice he was moving. The tenant's plans had changed, and he did not move as originally planned.

The tenant testified that although he was entitled to a re-payment plan for the unpaid rent for the months of May through August 2020, the landlord has failed to give him one. Furthermore, the tenant testified that although he tried to make payment in September 2020, the landlord refused and demanded a lump sum payment of the outstanding rent. The tenant called a witness in the hearing, who testified that the landlord refused the tenant's rent payment, demanding that the tenant pay a lump sum, and refused to issue the tenant any receipts. The landlord testified that the tenant contacted him on September 12, 2020 requesting any extension to pay the monthly rent, and that the tenant has not made efforts to pay the outstanding rent.

The tenant testified that the landlord has refused to issue receipts or perform outstanding repairs in the rental unit as well. The tenant referenced a previous hearing for emergency repairs, which was dismissed on August 19, 2020 as the Arbitrator determined the requested repairs do not fall under the definition of emergency repair under the *Act*. The tenant testified that the landlord has failed to perform repairs in the rental unit, and has been entering the tenant's rental unit without proper notice.

The landlord responded that he had attended on August 25, 2020, after the last hearing, to perform repairs and check the rental unit. The landlord determined that everything was functional, but the tenant has failed to maintain the rental unit in reasonably clean condition. The landlord disputes entering without the tenant's permission, and testified that the tenant had agreed to allow him into the rental unit without written notice. The tenant testified that the shower was not properly repaired, and that the floor and walls were in very bad condition as supported by the photos submitted in evidence.

Analysis

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The landlord testified that the tenant has failed to pay rent for the months of May 2020 through to September 2020, after which the landlord served the tenant with a 10 Day Notice to End Tenancy.

Section 26 of the *Act* requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” Although I accept the landlord's testimony that the tenant has not paid rent for the months of May 2020 through to August 2020, the rent payments for this period fall under the definition of affected rent as set out in the *COVID-19 Regulation*.

Residential Tenancy Policy Guideline #52 states the following about affected rent:

*The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a **prior agreement** has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required. A “**prior agreement**” means an agreement between a landlord and a tenant that:*

- *is in writing;*
- *was entered into before July 16, 2020 (the date that government announced the repayment framework); and*
- *addresses affected rent that is overdue after July 16, 2020.*

A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.

I am not satisfied that the landlord has provided sufficient evidence to support that the tenant was given a valid repayment plan for the affected rent. Further information can be accessed at the following links:

https://www.bclaws.ca/civix/document/id/oic/oic_cur/0475_2020

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19>

As September 2020 rent does not fall under the definition of affected rent, I must determine whether the tenant failed to comply with section 26 of the Act. The tenant testified that he had attempted to make payment in September for the September 2020 rent, but the landlord has refused and demanded a lump sum payment of all the outstanding rent. The tenant called a witness who testified that she was present during this conversation. In light of the conflicting testimony, I accept the tenant's testimony, which was supported by sworn witness testimony, that the landlord had refused to accept rent payment strictly for the month of September 2020. As noted above, I am not satisfied that the landlord had given the tenant a valid repayment plan for the affected rent, which gives credibility to the tenant's testimony that the landlord had demanded that the tenant pay a lump sum of all the arrears. As the 10 Day Notice was issued on September 2, 2020, I am not considering the status payment of rent for October 2020 in consideration of whether to uphold the 10 Day Notice or not.

Based on these circumstances I am allowing the tenant's application to cancel the 10 Day Notice dated September 2, 2020, and this tenancy is to continue until ended in accordance with the Act. The landlord's entire application is dismissed without leave to reapply.

Section 32(1) and (2) of the Act outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant testified that amongst several outstanding repairs, the shower repairs remain the most urgent. Although the landlord's testimony is that he had attended to perform repairs, I am not satisfied that this repair constitutes a permanent or proper repair as evidenced by the condition presented in the tenant's photos. Although the landlord responded that the condition of the shower and rental unit reflects the tenant's failure to maintain the rental unit, I find that the landlord has failed to maintain the rental unit, and in particular the shower, in a state of decoration and repair that is suitable for use by the tenant.

Given the testimony and evidence before me, I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

I order that the landlord provide the tenant with written confirmation when all the necessary repairs or maintenance have been completed. I order that this written confirmation be provided within the latter of 2 weeks of the date this order is received, or when the work has been completed.

I am not satisfied that the landlord has entered the tenant's rental unit in a manner that contravenes the *Act*, and accordingly I decline to make any further orders for the landlord to comply with the *Act*.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice dated September 2, 2020, and this tenancy is to continue until ended in accordance with the *Act*.

The landlord's entire application is dismissed without leave to reapply.

I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

I order that the landlord provide the tenant with written confirmation when all the necessary repairs or maintenance have been completed. I order that this written confirmation be provided within the latter of 2 weeks of the date this order is received, or when the work has been completed.

The dismiss the remaining portion of the tenant's application without leave to reapply.

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: October 28, 2020

Residential Tenancy Branch