



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1094445 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, OLC

For the landlord: OPUM-DR, OPU-DR-PP, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords; and
- an order requiring the landlords to comply with the Act, regulations, or tenancy agreement;

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenants;
- a monetary order for unpaid rent and pursuant to a repayment plan; and
- to recover the cost of the filing fee.

The tenant, the owners of the numbered company listed as landlord, their interpreter and their agent, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and procedural matter 1:

I have determined that the portion of the tenant's application dealing with their request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement is unrelated to the primary issue of his dispute of the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dealt only with the issue of the Notice. This portion of the tenant's application is dismissed, with leave to reapply.

Preliminary and procedural matter 2:

The tenant's surname on the landlord's application was misspelled. I have used the correct spelling on the style of cause page of this Decision.

Additionally, the landlord listed two tenants on their application, the one appearing at the hearing and TA.

I have removed TA's name from consideration, as this tenant said TA vacated the rental unit in early summer.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of December 15, 2019, monthly rent of \$1,550, and a security deposit of \$750 being paid by the tenant to the landlord. The written tenancy agreement did not specify a day in the month upon which rent was due; however, both parties confirmed their understanding that the monthly rent was due on the first day of the month.

Pursuant to the Rules, the landlord's agent proceeded first in the hearing to explain and support their Notice.

The landlord's evidence as well as the tenant's evidence reflects that the tenant was served with the Notice, dated and issued on September 11, 2020, listing unpaid rent of \$1,550 and unpaid utility charges of \$87.81 owed as of September 1, 2020. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid the monthly rent for September, October or November. Additionally, the agent submitted that the tenant failed to make the additional rent payments of \$1,550 each for October and November, by the terms of the repayment plan given to the tenant. Filed into evidence was a copy of the repayment plan, listing a repayment of \$1,550 due on October 1st and \$1,550 on due November 1st.

In response to my inquiry, the landlord said that they usually go to the rental unit to collect the rent when it is available and that it is usually not in the full amount.

Tenant's response-

In response, the tenant said after receiving the Notice on September 11, 2020, he text messaged the landlord on September 14, 2020 and said he could pay \$1,700. The tenant said the landlord refused the monthly rent and would not come by the rental unit to collect the rent.

Landlord's reply -

The landlord's agent confirmed that the landlord did not want the monthly rent and they refused it.

In response to my inquiry, the landlord/co-owner of the company, confirmed that he typically attends the rental unit to collect the monthly rent from the tenant.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Tenant's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice, **within five (5) days**.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was issued.

In this case, however, the undisputed evidence is that the tenant informed the landlord that he had \$1,700 to pay, within three (3) days, which was more than the amount of \$1,550 listed on the Notice for unpaid rent for September, 2020 and unpaid utility charges listed on the Notice. The landlord confirmed that they refused the tenant's monthly rent, as they had other issues with him and wanted him out of the rental unit.

A landlord may not refuse the monthly rent when offered just so they can seek enforcement of their Notice.

I find the landlord cannot benefit from their refusal of the monthly rent, which was offered by the tenant within the allowed timeline under the Act.

I therefore **order** that the 10 Day Notice, dated September 11, 2020, be **cancelled**, with the effect that the tenancy continues until it may otherwise legally end under the Act.

Landlord's application –

As I have granted the tenant's application and cancelled the 10 Day Notice issued by the landlord on September 11, 2020, I dismiss the landlord's application for an order of possession of the rental unit.

As to the landlord's monetary claim, pursuant to section 89(1) of the Act, the landlord was required to serve the tenant with their application either by registered mail or personal service.

As the landlord's application was only posted to the door, I therefore dismiss the portion of the landlord's application for monetary compensation for unpaid rent and unpaid utility charges, with leave to reapply.

I dismiss the landlord's claim for recovery of the filing fee, as I have dismissed their application.

Cautions and information for the parties –

The parties were **informed** that I would only consider the matter of the Notice issued on September 11, 2020, and not any matter relating to unpaid rent in other months.

The tenant is **cautioned** that he still owes the monthly rent of \$1,550 for September, October and November 2020, each. The landlord may issue another 10 Day Notice for these amounts if left unpaid.

The landlord is **cautioned** that they may not refuse the monthly rent payments offered by the tenant, if these offers of payment are made within the correct time frame, if they intend to seek enforcement of their Notice.

I **inform** the parties that the repayment plan given by the landlord to the tenant does not comply with COVID-19 Regulation as to the amount of repayments. The landlord is not entitled to collect the full amount of the rent deficiency in the first two months of the repayment plan, October and November, 2020, if given to the tenant on September 11, 2020, as shown in their evidence.

The parties are invited to contact staff with the Residential Tenancy Branch (RTB) to ask about their rights and obligations as to this repayment plan. This contact information is included on the last page in this Decision, in an attachment.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 11, 2020 be cancelled and that the tenancy continue until ended in accordance with the Act.

The landlord's request for an order of possession of the rental unit based upon their 10 Day Notice is dismissed.

The landlord's monetary claim is dismissed, with 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: November 16, 2020

Residential Tenancy Branch