



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC, FFT, OPR-DR, OPRM-DR, FFL

Introduction

The tenant seeks an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") under section 46 of the *Residential Tenancy Act* ("Act"), an order that the landlord comply with the Act under section 62 of the Act, and recovery of the filing fee under section 72 of the Act. They filed their application on September 16, 2020.

The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid rent, under sections 55 and 67 of the Act. They also seek recovery of the filing fee under section 72 of the Act. They filed their application on September 24, 2020.

A dispute resolution hearing was held before me on November 10, 2020. The tenant, her husband (who spoke English and represented her) and the landlord's agent attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the tenant entitled to an order under section 62 of the Act?
5. Is either party entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy in this dispute began on November 10, 2019. Monthly rent is \$1,850.00, and it is due on the 10th of each month. The tenant paid a security deposit of \$925.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The landlord's agent ("agent") testified that the landlord served the Notice by posting on the door of the rental unit on September 11, 2020. The Notice, a copy of which was submitted into evidence, states that rent in the amount of \$1,850.00 was due on March 10, 2020. The agent further testified that the tenant has not paid any rent since March 10 and as of today (November 10, 2020) is in arrears totalling \$14,800.00.

The tenant's husband ("tenant") testified that they paid the rent not in Canadian dollars but in RMB every month by sending the amount to the landlord by way of the WeChat app. However, at some point, the tenant asked for other banking information from the landlord and was unable to obtain this. He further testified that the \$1,850.00 owing on March 10, 2020 would cover the period of March 10 to April 9, 2020. This would overlap beyond March 18, 2020, which is the period that would need to be considered as part of a rent payment plan.

In his final submission the agent testified that, yes, the tenant paid rent by WeChat but only until March 2020, at which point they stopped. Moreover, he said that even if the tenant had difficulty contacting the landlord for whatever reason that this does not preclude them from having to pay rent.

I asked the agent whether the tenant knew how to contact the landlord, to which he replied, yes. He added that, they were able to serve the landlord with the Notice of Dispute Resolution Proceeding for their dispute, and as such knew how to contact the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service.

The landlord's agent testified, and provided documentary evidence to support his submission, that the tenant did not pay rent when it was due on March 10, 2020. Moreover, they have not paid rent since that time. There is insufficient evidence before me to find that the tenant had a right under the Act to stop paying rent after March 10.

While [Order in Council No. 449](#) states that a landlord may not issue a 10 Day Notice for Unpaid Rent in relation to "affected rent" (rent becoming due and payable after March 18, 2020 and during the provincial state of emergency) without a payment plan, the Notice in this dispute was issued before the emergency period began. As such, I find that the Notice was validly issued for rent that was due before the state of emergency.

Further, while the tenant submitted a copy of some sort of financial transaction document dated February 9, 2020, the document is entirely in Chinese and I am unable to ascertain its contents. The tenant testified that they paid the landlord, but the landlord's agent disputes this. In the absence of any documentary evidence proving that the landlord in fact received any rent, I remain unpersuaded that the tenant paid the rent as claimed. Finally, it should not be overlooked that the tenant did not dispute that they have not paid rent since March 2020. No documentary evidence was submitted showing that any rent was paid since March 10, 2020.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. Namely, that the tenant did not pay rent when it was due on March 10, 2020.

As such, I dismiss the tenant's application to dismiss the Notice. Further, I dismiss the tenant's application for an order under section 62 of the Act, as there is no evidence for me to find that the landlord did not comply with the Act, the regulations, or the tenancy agreement.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act. Further, having dismissed the tenant's application, I grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision.

Pursuant to section 67 of the Act, I further award the landlord a total of \$14,800.00 in compensation for unpaid rent. As the landlord was successful in their application, I award them the filing fee of \$100.00, for a total of \$14,900.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenant's security deposit of \$925.00 in partial satisfaction of the above-noted award.

The balance of the award – \$13,975.00 – is granted to the landlord by way of a monetary order issued in conjunction with this decision.

Conclusion

I HEREBY:

1. dismiss the tenant's application in its entirety, without leave to reapply;
2. grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. If necessary, the landlord may file and enforce the order in the Supreme Court of British Columbia; and,
3. grant the landlord a monetary order in the amount of \$13,975.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 10, 2020

Residential Tenancy Branch