



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, RP
OPR-DR-PP, OPRM-DR, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application filed on October 8, 2020, she sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 7, 2020 (the "October Notice"), an Order restricting the Landlord's right to enter the rental unit in addition to an Order that the Landlord make repairs to the rental unit. In the Landlord's Application, filed on October 16, 2020, they sought an Order of Possession and monetary compensation based on the October Notice as well as recovery of the filing fee.

The hearing of the cross applications was scheduled for teleconference at 11:00 a.m. on December 18, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant appeared on her own behalf and had two friends, P.F. and B.D. with her for moral support. P.F. and B.D. were not affirmed and did not provide testimony on behalf of the Tenant. The Landlord appeared on his own behalf.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the October Notice be cancelled?
2. Should the Landlord's right to enter the rental unit be restricted?
3. Should the Landlord be ordered to make repairs to the rental unit?
4. Is the Landlord entitled to an Order of Possession and monetary compensation?
5. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began December 15, 2019. Monthly rent is \$2,200.00 and the Tenant paid a \$1,100.00 security deposit. The rental unit is a townhouse and the Tenant is responsible for paying the utilities.

The Tenant failed to pay her August 2020 rent following which the Landlord provided her with a repayment plan. According to this plan she was to pay an additional \$188.08 per month towards her arrears. The Landlord confirmed that he received \$500.00 from the government as rental assistance for August such that \$1,700.00 was outstanding.

In written submissions, as well as his testimony before me, the Landlord confirmed that, although the agreement provided that rent was due on the 15th of the month, that they agreed rent was payable on the 1st.

The Landlord testified that the Tenant failed to pay her September 2020 rent following which he served her with a 10 Day Notice to End Tenancy (the "September Notice"). Documentary evidence provided by the Tenant confirmed that the Tenant paid the outstanding rent on September 4, 2020 thereby canceling the September Notice.

The Landlord testified that the Tenant then failed to pay the October rent and failed to pay towards the payment plan. The Landlord issued the October Notice indicating the sum of \$2,200.00 was owing for rent in addition to \$127.19 for utilities. The Landlord stated that the Notice was put in the Tenant's mailbox on October 7, 2020. The

Landlord confirmed the Tenant failed to pay the rent within five days of service of the October Notice.

The Landlord further testified that the Tenant failed to pay her November and December rent such that as of the date of the hearing, the Tenant was in arrears of her rent in the amount of \$8,300.00 for the following:

August 2020 rent	\$1,700.00
October 2020 rent	\$2,200.00
November 2020 rent	\$2,200.00
December 2020 rent	\$2,200.00
TOTAL OWING	\$8,300.00

The Landlord further testified that the Tenant owes a total of \$479.28 for outstanding utilities including: \$127.19 for the electrical utility for the time period, July 25 – September 24, 2020 as well as \$352.09 for September 25, 2020 to November 24, 2020.

In support of her claim and in response to the Landlord's the Tenant testified as follows.

The Tenant confirmed that the sum of \$8,300.00 is outstanding in rent. The Tenant further confirmed that she did not pay the \$127.19 utility bill. The Tenant claimed that she only received the September 25, 2020 to November 24, 2020 electrical invoice the night before the hearing and noted that the bill is not due until December 21, 2020. The Tenant also stated that she did not understand the invoice as the amount due was less than the amount claimed by the Landlord.

The Tenant confirmed that she did not pay rent as she has been in financial distress. She stated that she was widowed in February and has been applying for government benefits as much as she can to provide for her four children. She is also actively attempting to secure alternate housing.

Analysis

The Landlord issued the October Notice pursuant to section 46 of the *Act*; the relevant portions of that section provide as follows:

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.

...

(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

I accept the Landlord's testimony that the Notice was placed in the Tenant's mailbox on October 7, 2020. Section 90 of the *Act* provides that documents served in such a manner are deemed served three days later; in this case, I find they were served on the Tenant on October 10, 2020. The Notice further informed the Tenant she had five days in which to pay the outstanding rent, or dispute the Notice. The Tenant applied to dispute the Notice on October 8, 2020.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) 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.

As also noted during the hearing, there are only four occasions, permitted under the *Residential Tenancy Act*, where a tenant has the right to withhold rent; they are as follows:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

The Tenant confirmed during her testimony that she had no such legal authority to withhold rent. She stated that she simply did not have the financial means to pay rent. While I empathize with the Tenant's unfortunate circumstances, she has failed to honour her agreement to pay rent to the Landlord and is significantly in arrears. This has no doubt created a financial hardship for the Landlord as well.

Although not acting as her agent or advocate, at the conclusion of the hearing the Tenant's friend asked if the October Notice would be cancelled because the tenancy agreement provided that rent was payable on the 15th of the month and the Notice was issued prior to that date.

The Landlord testified that rent was payable on the first of the month and further testified that the Tenant paid her rent on the first of the month despite the date indicated on the agreement. I accept the Landlord's submissions in this regard and find that rent was due on the first of the month for the following reasons.

A copy of the repayment plan for the August 2020 arrears was provided in evidence. In this letter, the Landlord reminds the Tenant that she has not paid her October 2020 rent and further reminds her that the payment was due October 1, 2020. The repayment plan also requires the Tenant to make her monthly payments on the first of the month.

Further, when the Tenant failed to pay her September rent on the 1st the Landlord issued a 10 Day Notice (the "September Notice"). The Tenant paid her rent on September 4, 2020 thereby canceling the Notice. Had rent not been due until the 15th, presumably the Tenant would have communicated this to the Landlord at the time of receiving the September Notice; instead the Tenant paid her September rent on September 4, 2020.

It is notable that the Tenant did not dispute the Landlord's testimony that rent was due on the 1st of the month; rather, this was only raised by her friend at the end of the hearing. In any case, had rent been due on the 15th of the month, presumably the Tenant would have communicated this to the Landlord at the time of receiving the October Notice, and would have paid her rent on the 15th.

The evidence confirms that the Tenant did not pay her October rent on the 15th of October. If the Tenant believed her rent payments were due on the 15th of the month, payment should have been made on that date. Whether rent is due on the 1st or the 15th, the evidence confirms the Tenant did not, at any time in October, pay her October rent. Further, the Tenant also failed to pay her November and December rent. The Tenant also conceded that she did not pay towards the repayment plan, such that \$1,700.00 is owed for August 2020 as well.

In all the circumstances I find the Landlord has met the burden of proving the October Notice should be upheld. I therefore dismiss the Tenant's request for an Order canceling the October Notice and I grant the Landlord's request for an Order of Possession. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

I find the Landlord has met the burden of proving he is entitled to monetary compensation from the Tenant. I therefore award him the sum of **\$8,300.00** for unpaid rent from August 2020 to December 31, 2020.

I accept the Landlord's testimony that the Tenant failed to pay the utilities for August to September and I award him recovery of the **\$127.19** claimed. This was not disputed by the Tenant.

I accept the Tenant's testimony that the September through November electrical bill is not due until December 21, 2020. I therefore dismiss, with leave to reapply, the Landlord's claim for related compensation. Should the Tenant not pay this invoice, the Landlord may make a further claim.

As the tenancy is ending, I dismiss the Tenant's claim for an Order restricting the Landlord's right to enter the rental unit as well as her claim for an order that the Landlord make repairs to the rental unit.

Having been successful in his Application I award the Landlord recovery of the \$100.00 filing fee for a total award of **\$8,400.00**.

Conclusion

The Tenant's request for an Order canceling the October Notice is dismissed without leave to reapply.

The Landlord's request for an Order of Possession is granted. This Order shall be effective 1:00 p.m. on December 31, 2020.

The Tenant's request for an Order restricting the Landlord's right to enter the rental unit and an Order that the Landlord make repairs is dismissed without leave to reapply.

The Landlord's request for monetary compensation is granted in part; the Landlord is entitled to the sum of **\$8,527.19** for the following:

August 2020 rent	\$1,700.00
October 2020 rent	\$2,200.00
November 2020 rent	\$2,200.00
December 2020 rent	\$2,200.00
July 25 – September 24 utilities	\$127.19
Filing fee	\$100.00
TOTAL OWING	\$8,527.19

The Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court.

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: December 21, 2020

Residential Tenancy Branch