



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, OLC, MNDCT, RR, LRE, PSF, LAT**

OPR, FFL

Introduction

This hearing dealt with applications filed by both the landlord and the tenant under the Residential Tenancy *Act* (the “*Act*”).

The tenant applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- A monetary order for damages or compensation pursuant to section 67;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order to suspend a landlord’s right to enter the rental unit pursuant to section 70;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62; and
- Authorization to change the locks to the rental unit pursuant to section 31.

The landlord applied for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord was represented by an articulated student, NU. As both parties were present, service of documents was

confirmed. Each party acknowledged service of one another's Applications for Dispute Resolution and neither party took any issues with timely service of documents. The landlord also acknowledged being served with the tenant's amendment.

Preliminary Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the tenant's application to cancel the landlord's notice to end tenancy and the landlord's application to end the tenancy for unpaid rent are related issues and could be heard together. The tenant's other issues were not sufficiently related and I exercised my discretion to dismiss them with leave to reapply at the commencement of the hearing.

At approximately 11:17 a.m., seventeen minutes into the hearing, the tenant was interrupted by a delivery of a freezer which took his attention away from the hearing and caused me to delay hearing the submissions of the landlord's articulated student. At this time, I advised the tenant that I would mute his line so the distraction of the freezer delivery would not disrupt the submissions of the landlord's articulated student. The tenant was not opposed to this. The tenant's line was un-muted after the landlord's submissions were presented and the tenant had a full opportunity to present his own evidence and testimony during the second half of the hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's articulated student provided the following submissions. There was a written tenancy agreement with the tenant, however the landlord has lost their copy. The tenant acknowledges he has a copy of the tenancy agreement, and stated it was drafted on a standard Residential Tenancy Branch form. The fixed one-year tenancy began on May 1, 2018 with rent set at \$2,500.00 per month, payable on the first day of each month. The tenancy became month to month at the end of the first year. A security deposit of \$1,250.00 was collected from the tenant which the landlord continues to hold, and no condition inspection report was done with the tenant at the commencement of the tenancy.

The parties agree that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 30, 2020 when it was posted to the tenant's door. The tenant acknowledges receiving it on that day, and a copy of the Notice was provided as evidence by both parties. It has an effective date of January 9, 2021 and states the landlord is ending the tenancy because the tenant has failed to pay rent in the amount of \$5,000.00 due on 01/10/2020 – 01/12/2020.

The landlord submits that the tenant did not pay rent for the month of October. He paid November rent, however no rent was received for December, 2020. The \$5,000.00 in arrears shown on the notice to end tenancy represents October and December rent. Since serving the tenant with the notice to end tenancy, the tenant has not paid any rent for January, February or March, 2021.

The tenant gave the following testimony. He acknowledges he did not pay rent for October or December. He paid rent for the month of November only. The reason he didn't pay rent is because of a fundamental breach of contract of the landlords. He considered himself to be entitled to compensation from the landlord for "grievous neglect". Work was done on his home by farmers from Mexico which the tenant describes as substandard.

The tenant went on to describe issues with the rental such as a non-functioning toilet, no railings on the balcony and a dead birch tree that causes concern for his safety. There are also damaged gutters banging into the glass of his windows all night long which disturbs him.

The tenant never sought an order for repairs from the Residential Tenancy Branch because the tenant was in Mexico while the "non-performance" was occurring. The tenant states it did not occur to him to seek such an order since it's not an area of law

that he specializes in. The tenant announced to the landlord that he would stop paying rent in his November letter, instead.

Analysis

Section 46 of the *Act* states:

- (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.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.
- (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.

As the tenant acknowledges receiving the notice that was posted to his door on December 30, 2020, I find the tenant was served with it on that day pursuant to section 88 and 90 of the *Act*. The tenant filed an Application for Dispute Resolution on January 4, 2021, the fifth day after being served with the notice to end tenancy.

Section 26 of the *Act* states:

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.

The parties agree that the tenant is obligated under the tenancy agreement to pay rent in the amount of \$2,500.00 per month on the first day of each month. During the hearing, the tenant acknowledged he failed to pay rent for October and December, 2020 and that he was in arrears in rent in the amount of \$5,000.00. He also did not dispute that he has not paid rent for January, February or March 2021 either.

The tenant argues that the reason he stopped paying rent was because he felt the landlords had “fundamentally breached” the tenancy agreement. If the tenant considered the landlord to be “fundamentally breaching” the *Act* or the tenancy agreement, the tenant’s recourse was to file an Application for Dispute Resolution seeking an order that the landlord comply with the *Act* while continuing to pay rent. The

tenant was not entitled to arbitrarily withhold rent. I find that the tenant did not have any right under the *Act* to deduct any portion or all of the rent as he has done. The tenant has breached section 26 of the *Act* by failing to pay rent when it is due under the tenancy agreement and for this reason, I uphold the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Pursuant to section 46(2), I have reviewed the landlord's notice to end tenancy and find it complies with the form and content requirements as laid out in section 52. As the effective date stated on the landlord's notice to end tenancy has passed, the landlord is entitled to an order of possession effective two days after service upon the tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary claim.

My ability to grant orders is limited to what is stated in the application pursuant to Rule 2.2 of the Rules of Procedure and the landlord did not seek a monetary order for unpaid rent. The landlord is at liberty to file a further Application for Dispute Resolution seeking arrears in rent should they wish to do so.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: March 29, 2021

Residential Tenancy Branch