



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR-DR OPRM-DR FFL
For the tenant: CNR

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2021 (10 Day Notice), for a monetary order of \$1,550.00 for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice and their filing fee was waived.

The tenant, the landlord and an agent for the landlord FC (agent) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

As the agent confirmed that they did not serve the tenant with their application, the landlord's application was dismissed with leave to reapply, due to insufficient service under the Act. As the landlord's application was dismissed with leave due to a service issue, I do not grant the filing fee for the landlord. As a result, the hearing continued with the tenant's application.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words

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

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Also, the parties agreed that FC was an agent for the landlord, and as a result, I amended the landlord's application to reflect the correct landlord name listed on the tenancy agreement, SA.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2020. The monthly rent is \$1,450.00 per month and is due on the first day of each month.

The tenant testified that they vacated the rental unit on April 28, 2021, which the agent did not agree with as the tenant had not returned the keys or replied to any requests for a move-out inspection so the landlord considered the rental unit occupied due to no other information from the tenant. The tenant confirmed they had not returned the rental unit keys at the hearing.

The tenant confirmed they received the 10 Day Notice on February 2, 2021. The tenant disputed the 10 Day Notice on February 5, 2021. The tenant claims she tried to pay the rent on February 1, 2021; however, the tenant left out the information on their application that they post-dated the cheque for February 5, 2021. The agent testified that the landlord attended the rental unit on February 1, 2021 and asked the tenant to change the date to February 1, 2021 instead of February 5, 2021, which the tenant refused to do. The parties then disputed what happened next. The tenant says they tried to return the cheque dated February 5, 2021 and the landlord refused it, while the agent stated that the tenant took the cheque back and after refusing to change the date, the tenant did not return the cheque and that several requests were made to pay the rent, and the tenant did not do so.

The agent confirmed that the tenant did pay March and April 2021 rent but has failed to pay February and May 2021 rent.

The tenant was asked if they made any attempt to pay February 2021 rent after receiving the 10 Day Notice and the tenant replied, "no."

At this point in the hearing, the tenant was advised that their application was being dismissed as a result, which I will address further below.

The parties were asked if they had any questions, the agent stated they did not. The tenant then began a diatribe alleging breaches of the Act by the landlord. As none of those matters related to the matters before me, the hearing was concluded.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. In fact, page two of the 10 Day Notice reinforces this by indicating to the tenant that the Notice may be disputed for specific reasons such as proof rent was paid, etc. In the matter before me, I find the tenant confirmed that they made no attempt to pay rent after being served with the 10 Day Notice. Therefore, **I dismiss** the tenant's application to cancel the 10 Day Notice as a result. I find that the 10 Day Notice is valid, and I uphold the 10 Day Notice as I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act.

Order of Possession – The effective vacancy date of the 10 Day Notice was February 12, 2021. In addition the tenant confirmed they have not returned the rental unit keys and given that rent is due on the first day of each month, I prefer the landlord's version of events, in that the landlord is unsure if the tenant has vacated as there was not keys returned or move-out inspection performed. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on February 12, 2021 in accordance with the 10 Day Notice.

Pursuant to section 55(4)(b) of the Act, I exercise my discretion to grant the unpaid rent for February 2021 of \$1,450.00 and May 2021 of \$1,450.00 to the landlord pursuant to section 26 of the Act, which requires that rent is to be paid on the first day of each month and to date, no rental unit keys have been returned to the landlord. Therefore, pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$2,900.00** for February and May 2021 unpaid rent.

Conclusion

The landlord's application was dismissed with leave to reapply, due to a service issue.

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended February 12, 2021.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the amount of unpaid rent of \$2,900.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The orders will be emailed to the landlord only for service on the tenant.

The tenant is reminded that they may be liable for all enforcement costs related to the orders.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 7, 2021

Residential Tenancy Branch