



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, RP, MNDCT, CNR-MT, LRE, DRI

Introduction

The tenant filed an Application for Dispute Resolution on February 19, 2021 seeking an order to cancel the 10 Day Notice to End Tenancy (the “10 Day Notice”), with a plea for more time to dispute the notice. The also applied on the following grounds:

- a) reimbursement of the Application filing fee
- b) the landlord’s compliance with the legislation and/or the tenancy agreement
- c) repairs after the landlord did not complete their request
- d) compensation for monetary loss
- e) suspension or set conditions on the landlord’s right to enter the rental unit
- f) dispute of a rent increase.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 31, 2021.

The landlord and their agent attended the hearing; the tenant did not. This hearing time was reserved after it was adjourned from May 14, 2021. I confirmed that the tenant was advised of this adjournment. They were provided with the correct call-in number and participant code in the Notice of Hearing. I confirmed throughout the duration of the call that the tenant was not in attendance.

In the conference call hearing I explained the process and offered the landlord the opportunity to ask questions. I provided the landlord the opportunity to present oral testimony and make submissions based on their evidence during the hearing.

Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

The matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the notice to end tenancy issued by the landlord. By application of the *Rules of Procedure*, I dismiss the tenant's other grounds for Application, those listed as a) through f) above. These grounds are dismissed with leave to re-apply.

Issues to be Decided

Is the tenant entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit in which to do so as prescribed by the *Act*?

Is the tenant entitled to an order to cancel the 10-Day Notice pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the landlord entitled to an order of possession pursuant to s. 55(4) of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented the terms of the tenancy agreement. It was signed on November 1, 2018 by the landlord, and the tenant. The start of the tenancy was

November 1, 2018, for an initial fixed term ending on October 31, 2019. The monthly rent was \$1,650 per month, payable on the first of each month.

In the hearing, the landlord gave other details about the tenancy throughout 2020. One of the two tenants moved out in 2020, and the landlord gave a reduction in rent for a few months in 2020. After a few months of non-sufficient funds coming from the tenant's bank, the rent paid by the tenant dropped to \$825, half the rent amount indicated in the tenancy agreement. The landlord did not provide a specific breakdown of rent amounts paid and rent amounts owing; however, they described this more generally in the hearing to demonstrate that the tenant had not been paying the full amount of rent for some time prior to the 10-Day Notice.

The landlord issued the 10-Day Notice on January 29, 2021 for the January 2021 unpaid rent. As indicated on the document, this was for the amount of \$1,250. The document indicates the landlord served the tenant in person on January 29, 2021.

The tenant filed an Application for Dispute Resolution (the "Application") on February 19, 2021 seeking an order to cancel the 10-Day Notice. The dispute period expired on February 3, 2021.

Analysis

In regard to the tenant's request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

Here, the tenant did not attend the hearing to speak to the reason for extending the time limit. There is no evidence to show that exceptional specific circumstances were in place during the 10-day dispute period that expired on February 3, 2021.

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlord issued the 10 Day Notice the tenant owed \$1,250 in rent for the month of January 2021. I am satisfied the landlord issued the 10 Day Notice on January 29, 2021, and the tenant received it on that same day. There is no evidence contrary to that of the landlord presented in the hearing.

The tenants' application to cancel the 10-Day Notice is dismissed. The tenancy is ending.

Under s. 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10-Day Notice complies with the requirements of form and content. The landlord is entitled to an order of possession as of the effective date shown, February 7, 2021.

The *Act* s. 55(1.1) specifies that I must grant an order requiring the payment of the unpaid rent. In line with this, I grant the landlord a monetary order for the amount of \$1,250 which is the amount owing for January 2021. The landlord must apply for compensation for other amounts owing beyond this in a separate dispute resolution process, including any remaining utility amounts.

Conclusion

For the reasons outlined above, I dismiss the tenant's application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **TWO DAYS after service of this Order** the tenant. The landlord must serve this Order of Possession on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the tenant to pay the landlord the amount of \$1,250, pursuant to s. 55(1.1) of the *Act*. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 1, 2021

Residential Tenancy Branch