



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNR RR OLC LAT

Introduction

The tenant seeks various relief under sections 46(4)(b), 31 and 70, 62, and 65(1)(f) of the *Residential Tenancy Act* (the “Act”).

Both the tenant and the landlord attended the hearing, both were affirmed, and no significant service issues were raised.

Preliminary Issue: Dismissal of Unrelated Claims

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

It is my finding that the claims for an order for landlord compliance (section 62 of the Act), for an order to authorize a change of locks (sections 31 and 70), and for an order for the reduction of rent (section 65(1)(f) of the Act) are unrelated to the foremost claim to dispute a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) under section 46(4) of the Act.

Given that the tenancy is being ended, as concluded in this decision, these remaining claims are to be dismissed without leave to reapply.

Issues

The issues that must be decided in this application are as follows:

1. Is the tenant entitled to an order cancelling the Notice?
2. If the tenant is not entitled to an order cancelling the Notice is the landlord entitled to an order of possession and a monetary order?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began April 1, 2021. Monthly rent is \$1,500.00. There is no written residential tenancy agreement in evidence, but there is in evidence a copy of a Shelter Information document. The Shelter Information document includes the name of the tenant, and it includes a section reflecting that the client's portion of the rent—that is, the amount that the tenant is required to pay to the landlord—as \$1,500.00.

The landlord testified that the tenant has not paid any rent since December 2021. In other words, the tenant has not paid any rent for January, February, March, April, May, June, July, August, and September 2022. Arrears now stand at \$13,500.00.

Regarding the Notice, a copy of which is in evidence, the landlord gave evidence that he served the Notice on the tenant on May 7, 2022. Service was executed by the Notice being posted to the door of the rental unit.

The tenant testified that the landlord had removed himself from the information required by the ministry which pays the rent (or part of the rent). She further stated that she did not stop the payment of rent, but that the landlord has “brought it upon himself” in removing himself as the landlord under the Shelter Information arrangement.

In rebuttal, the landlord submitted that 90% of the tenant's testimony is completely false. He asked, why would he request the ministry to stop putting rent payments into his bank account. It would make no sense, he argued. He is, he added, at his wit's end.

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.

However, when a tenant disputes a notice to end a tenancy the onus shifts onto the landlord to establish the ground for issuing the notice.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement (unwritten as it is) for this tenancy requires that the tenant pay rent on the first day of the month.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

In this case, there is no evidence before me to find that the tenant had any right under the Act to not pay the rent. Conversely, the landlord provided persuasive evidence that the tenant has not paid a single dime toward rent since the beginning of 2022. Nor, it is worth noting, did the tenant in fact dispute that this is the case. The tenant provided no documentary evidence showing that she made a single payment on any rent during the past nine months. And I find the tenant's testimony about the landlord "bringing this situation upon himself" to be absurd and lacking any semblance of believability.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the Notice was issued on the basis that the tenant has not paid rent, and had not paid rent owing on May 1, 2022, after which the Notice was issued. Having reviewed the Notice it is my finding that it complies with the form and content requirements of section 52 of the Act.

Given the above, I both dismiss the tenant's application to cancel the Notice and uphold the landlord's Notice. Pursuant to section 55(1) of the Act the landlord is thereby granted an order of possession of the rental unit. A copy of the order of possession is issued within this decision to the landlord, who must serve a copy of the order of possession on the tenant.

The tenancy is ordered ended, effectively immediately, and the tenant must vacate the rental unit within 2 days after receiving a copy of the order of possession.

Pursuant to section 55(1.1) of the Act, I further order that the tenant is required to pay to the landlord unpaid rent in the amount of \$13,500.00. A monetary order in this amount is issued with this decision to the landlord, who must also serve a copy of the monetary order upon the tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. The tenant's application be dismissed without leave to reapply.**
- 2. The landlord be granted an order of possession of the rental unit. A copy of the order of possession must be served upon the tenant by the landlord.**
- 3. The landlord be granted a monetary order for unpaid rent in the amount of \$13,500.00. A copy of the monetary order must be served upon the tenant by the landlord.**
- 4. The tenancy is ended effective immediately.**

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: September 27, 2022

Residential Tenancy Branch