



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNR, CNC**

Landlord: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for the 10 Day Notice pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, and her Legal Counsel attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by attaching a copy to the Tenant's door on November 1, 2022, the Tenant confirms receipt on November 4, 2022, deemed served on November 4, 2022;
- the Landlord's 10 Day Notice served by attaching a copy to the Tenant's door on January 2, 2023, the Tenant confirmed receipt on January 11, 2023 as that was when she was released from jail, I find the 10 Day Notice was deemed served on January 5, 2023; and,
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on November 26, 2022, the Landlord confirmed receipt, deemed served on December 1, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to a Monetary Order and an Order of Possession?
3. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
4. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Landlord:

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on March 3, 2022. Monthly rent is \$950.00 payable on the first day of each month. A security deposit of \$500.00 was

collected at the start of the tenancy and is still held by the Landlord. The Tenant testified there were no agreed terms about pets. Nothing prohibited pets in the advertisement she answered for the tenancy.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property. The effective date of the One Month Notice was November 30, 2022.

The Landlord provided further details of the causes to end this tenancy as:

tenant as per verbal and written text messages was told that if police comes around looking for her again, we will end her tenancy. yesterday police came 2 times looking for her and has inform us that if [Tenant] comes around we should inform them.

the tenant [name] has issues with the police department or law that she is unable to sort out despite giving us numerous assurances that she will take care of it.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$950.00 in outstanding rent on January 1, 2023. The effective date of the 10 Day Notice was January 11, 2023.

The Landlord testified that the police were coming by the residential property five or six times per week, sometimes at 2:00 in the morning, or sometimes they would just wait outside. The Landlord said he told the Tenant that they did not want the police coming and knocking on their door. On November 28, 2022, the Landlord said there was a person loading televisions into the Tenant's residence. This person offered to sell a television to the Landlord's friend.

The Landlord said the police were there every other day. The police were knocking on the Landlord's door and asking where the Tenant was. The police were telling the Landlord that he was to report to the police when she was there.

It was the third or fourth time the Tenant was late with the rent, so the Landlord issued the 10 Day Notice on January 2, 2023. The Landlord said he has not received the rent yet. The Landlord waited the 10 days, and then he applied for dispute resolution

seeking an Order of Possession for the rental unit. The Landlord said her family showed up and they were taking all her things and loading a U-Haul truck.

The Landlord said he waited for 30 days, then he posted a notice that he would be evicting her. He said he waited three days, then on February 15, 2023, he took all her possessions out of the rental unit. The Landlord testified that the last day he saw the Tenant at the rental unit was January 12, 2023; however, the Landlord agreed that the tenancy ended on the effective date of the 10 Day Notice on January 11, 2023.

The Tenant said the last day she was in the rental unit was January 12 or 13, 2023. She attempted in good faith to pay the Landlord her rent on January 11, 2023 when she was released from jail, but she said he would not accept it. She said she had been removed. The Tenant stated that all her possessions were thrown into a great big garbage pile and are destroyed. The Tenant's Legal Counsel said that the tenancy was forced to end on January 11, 2023.

The Landlord is seeking 1.5 months of rent, from January 1, 2023 to February 15, 2023.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It 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 Landlord's One Month Notice was deemed served on November 4, 2023. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied to dispute the One Month Notice on November 13, 2022 within 10 days after receiving the notice.

The Landlord stated that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property. The Landlord testified that the police were coming by the property 5 or 6 times per

week, and some person tried to sell the Landlord's friend a television. Because the police are coming to the residential property, this does not prove that the Tenant is engaged in illegal activity. I find the Landlord has not proven cause on a balance of probabilities to end the tenancy and I cancel his One Month Notice.

The Landlord's 10 Day Notice was deemed served on Tenant on January 5, 2023. The Tenant actually received the 10 Day Notice on January 11, 2023 when she was released from jail. The correct effective date for the 10 Day Notice was January 12, 2023 and pursuant to Section 53(2) of the Act, the effective date is automatically changed to January 12, 2023. After this correction, I find the 10 Day Notice complies with the form and content requirements of Section 52 of the Act.

The Tenant did not dispute the 10 Day Notice, and I find the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which was January 12, 2023 pursuant to Section 46(5)(a) of the Act.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

Order of possession for the landlord

55 ...

(2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant. I note that the Landlord took it upon himself to physically remove the Tenant from the rental unit. He did not have legal standing to conduct himself in this fashion and the Tenant is free to start a monetary claim against the Landlord.

The Landlord is also entitled to compensation for non-payment of rent pursuant to Section 55(4)(b) of the Act. Both parties agreed that the tenancy ended on January 11, 2023, and the total outstanding rent amount up to that period of time was \$337.10. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in satisfaction of the monetary award. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start his application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord has \$62.90 left in the security deposit.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of 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 Act.

Dated: April 03, 2023

Residential Tenancy Branch