Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Island Hopper Farms
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on June 28, 2023 seeking a cancellation of the Landlord's 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"), the Landlord's compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 21, 2023. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions. Each party confirmed service of evidence to the other.

Preliminary Matter – second 10-Day Notice

The Tenant made this Application to the Residential Tenancy Branch on June 28, 2023 to dispute the 10-Day Notice issued by the Landlord on June 27, 2023.

The Landlord issued a second 10-Day Notice on July 7, 2023. I amend the Tenant's Application to include consideration of this second end-of-tenancy notice from the Landlord. The *Residential Tenancy Branch Rules of Procedure* allow for an amendment at the hearing stage, as set out in Rule 4.2. I find this was a circumstance that could reasonably be anticipated by the Landlord, with the Landlord aware of this scheduled hearing by the time they issued the second 10-Day Notice on July 7, 2023.

Preliminary Matter – Tenant's Application for compensation

The Tenant provided additional evidence to the Residential Tenancy Branch on July 5, 2023. This was a "Tenant Request to Amend a Dispute Resolution Application". In their original Application the Tenant had specified a compensation amount for what they paid for accommodation elsewhere. The Tenant had also provided receipts for those payments, and included a piece in their request for compensation because of time away from work.

in their amendment document, the Tenant's provided a total for those amounts: $7,906.

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 hearing 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 whether the tenancy will end based on either the initial or second 10-Day Notice the Landlord issued. I find the most important issue to determine is whether or not the tenancy is ending; therefore, the Tenant may reapply on this issue of compensation.

Issues to be Decided

Is the Tenant entitled to cancellation of the initial 10-Day Notice?

Is the Tenant entitled to cancellation of the second 10-Day Notice?

If the Tenant is unsuccessful in either case, is the Landlord entitled to an order of possession in line with the 10-Day Notice?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

In the hearing, the Landlord and Tenant each confirmed that the rent amount was $1,950 per month, due on the first day of each month as set out in the tenancy agreement. The agreement started on May 15, 2022 and was set for a fixed-term ending on April 30, 2023, reverting to a month-to-month agreement after that term.

The Landlord served the initial 10-Day Notice on June 28, 2023. A copy of this document appears in the Landlord's and Tenant's evidence. On page 2 of the document, the Landlord indicated that the Tenant failed to pay rent in the amount of $1,040 due on June 26, 2023. In the hearing, the Landlord stated this document did not have an end-of-tenancy date in the required space.

Explaining these circumstances in the hearing, the Landlord described emails they had wherein they explained that June rent would be payable on June 10, owing to clarification from their insurer on rent amounts that would be covered by insurance. On June 26 the Landlord received notice from their insurer that the rent paid by the insurer for that month was $910. The Landlord notified the Tenant of this on June 26, meaning the Tenant would owe $1,040. The Tenant replied "very quickly" on that same day to say they felt that discount in rent was not enough.

The email exchange continued on that day, with the Landlord pledging to again query the insurer on further coverage of rent for June. This was based on the Tenant's description of having to pay extra for hotels to stay in intermittently during the restoration process. The Tenant responded to say they were not refusing to pay rent; however, they way things were working out left them with having to pay "basically double the rent for all of this nightmare."

On June 27, the Tenant asked again for the Landlord to "scratch the 1040 for this Month". Also: "I will agree to pay the full rent for July first moving forward with everything." To this, the Landlord basically said the Tenant was free to make an Application at the Residential Tenancy Branch for an arbitrator's decision in the matter.

According to the Landlord, after they served the initial 10-Day Notice, the Tenant stated they would not pay rent for June or July. The Landlord served a second 10-Day Notice on July 7. This listed the full amount of July rent as unpaid, $1,950, due on July 1. This second 10-Day Notice gave the end-of-tenancy date as July 14, 2023.

The Tenant presented that they were waiting to hear back from insurance, after a flood in the rental unit. The Tenant basically disagreed with the situation and how everything was torn

apart in the rental unit. They had to find other arrangements to live with their family during the period in which they found the rental unit to be unlivable. A restoration firm started on July 5 by ripping up flooring and exposing existing mould. The Tenant's acquaintance had places to rent out on their own, and this was the option for the Tenant in the short-term.

The Tenant reiterated in the hearing that the Landlord, at some point, stated they "would not ask for rent". The Tenant agreed to wait for the insurer to settle with the Landlord how much rent amount was covered by insurance. The Tenant's recall about July rent, in particular, was that "the Landlord explained that they would not ask for rent until the work is done, then they served another eviction [*i.e.*, the second 10-Day Notice]". The Tenant recalled that work in the rental unit finished on July 17th or July 18th.

The Landlord pointed to particular evidence they described as their "request for discounted rent." On June 26 they asked the Tenant for $1,040; after this, "the Tenant refused to pay rent for June or July." According to the Landlord, by June 28 the Tenant was still saying they did not want to pay anything.

The email from the Tenant on June 28, as it appears in the record, shows the Tenant's query to the Landlord: "I just don't think that I should have to pay out of pocket for any of this." Also: "As far as July goes like I said. I will have to stay in a hotel for at least nine days out of that month Which will end up costing me just over $2100 So unless you wanna scratch this month? And the rent for next month?"

As stated by the Tenant in the hearing: "why would I pay rent for a biohazard construction place?" The Tenant's basic position, as stated in a summary statement, was that they should not have to pay rent for these 2 months.

In their summary statement in the hearing, the Landlord reiterated that it was only after the Tenant refused to pay that they issued the initial 10-Day Notice, and then the second 10-Day Notice.

Analysis

The Landlord and Tenant each provided a copy of the initial 10-Day Notice. I find the Landlord in the hearing acknowledged the document did not contain an end-of-tenancy date where required on page 1.

The *Act* s.52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature; the rental unit address; and the effective date. Additionally, the notice must be in the approved form when given by a landlord.

On my review, the initial 10-Day Notice issued by the Landlord does not contain the necessary element of the tenancy end date; therefore, it does not comply with s. 52. I cancel this initial 10-Day Notice served by the Landlord on June 27, 2023. It is of no legal effect and the tenancy will not end for this reason, and there is no Order of Possession to the Landlord in line with this 10-Day Notice.

On June 2 the Landlord notified the Tenant that the June rent would not be due until June 10th. This in fact turned into June 26th, with the Landlord issuing the initial 10-Day Notice on that same day.

The *Act* s. 26 sets out the following:

> 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.

A "right under this Act to deduct all or a portion of rent" only arises on the order of an arbitrator through a dispute resolution proceeding. That may be reimbursement to a tenant for emergency repairs that the tenant previously paid for, or some other reduction for a different reason such as lack of services or facilities. In any cause, this arises only under the authority of s. 72(2)(a) of the *Act*.

Despite the Landlord here agreeing to a delayed payment of the discounted June rent, I find no such agreement was in place for the following month of July.

The only communication in the evidence was the Tenant's proposal that a third party [*i.e.*, an arbitrator] would have to decide on whether July rent should properly be reduced because of the restoration work that interrupted the Tenant's ability to live unrestricted in the rental unit. This dialogue with the Landlord continued until 7:09pm on June 30, 2023, with the Landlord

stating “I feel it would be best for a third party to decide,” in response to the Tenant’s email from June 28 wherein the Tenant requested that the Landlord “scratch . . . the rent for next month [*i.e.*, July].”

The record shows the Tenant acknowledged this message from the Landlord on July 2, with “Yes I agree sounds good thanks.: By this point, the Tenant did not pay July rent as required under the tenancy agreement; however, they also applied to dispute the initial One-Month Notice. I find that by this point the Tenant had challenged the amount of rent owing, albeit after the Landlord served the initial 10-Day Notice for unpaid rent.

Into July, I find the Tenant withheld rent without authority. A dispute resolution Application underway does not grant a pass on payment of rent and s. 26 applies. I find the Landlord acknowledged the impact of the Tenant having to pay for accommodation elsewhere; the Landlord did not authorize non-payment of rent, either implicitly or explicitly. To make this clear to the Tenant, the Landlord served the second 10-Day Notice.

Even though the Landlord in June allowed the Tenant to deduct the rent amount, I find the Landlord was clear and detailed on their instruction to the Tenant about waiting for the insurer’s input. The Tenant disagreed with the amount covered, and into July took the next step of withholding the July rent amount that remained unpaid. I find the Landlord’s intention and message to the Tenant was clear: the Landlord did not allow further deductions in rent because they served the initial 10-Day Notice on June 28, then the second 10-Day Notice on July 7. While the Tenant did apply for clarity on the issue to the Residential Tenancy Branch, they withheld the July rent unilaterally without authorization.

I conclude the Tenant did not pay the full rent amount as required. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent because of the work involved in the restoration, or their disagreement with the Landlord about the insured amount covered. I find the Tenant breached s. 26 of the *Act*. I dismiss the Tenant’s Application for a cancellation of the second 10-Day Notice.

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 document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the second 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

I grant the Landlord reimbursement of the remainder of June rent; this amount is $1,040. I make this order for compensation as per s. 67 of the *Act* because I ordered the initial 10-Day Notice cancelled because of the form and content stipulations in s. 52.

For the second 10-Day Notice, the *Act* s. 55(1.1) applies in this situation and I must grant an order requiring payment of that July unpaid rent. This is the amount associated with the second 10-Day Notice: $1,950.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from a deposit held by a landlord. The Landlord here has established a claim of $2,990. After setting off the $900 security deposit, there is a balance of $2,090. I am authorizing the Landlord to keep the security deposit in full and award the balance of $2,090 as compensation for the rent amounts owing.

The Tenant was not successful on their Application; therefore, I grant no reimbursement of the Application filing fee to them.

Conclusion

I grant the Tenant's Application for cancellation of the initial 10-Day Notice.

I dismiss the Tenant's Application for the Landlord's compliance with the *Act* and/or the tenancy agreement. The Tenant was not authorized to withhold rent during the time of restoration/construction in the rental unit.

I dismiss the Tenant's Application – as amended at this hearing stage -- for cancellation of the second 10-Day Notice. I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

Pursuant to s. 55(1.1), s. 67, and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of $2,090. I provide the Landlord with this Monetary Order in the above terms they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 29, 2023

Residential Tenancy Branch