



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF
Tenant: CNR, CNC, MNDC

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, to cancel a One Month Notice to End Tenancy for Cause and for compensation for damage or loss under the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states that *"if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply."* I find that the Tenant's application for compensation (for a breach of quiet enjoyment) is unrelated to her application to cancel a 10 Day Notice for Unpaid Rent and a One Month Notice to End Tenancy for Cause, the sole ground of which is repeated late payment of rent. Consequently, the Tenant's application for compensation is dismissed with leave to reapply (on the terms set out in the conclusions section of this decision).

At the outset of the hearing, the Parties confirmed that they were each served with the others' documentary evidence and hearing packages (which include the Application for Dispute Resolution and Notice of Hearing). All of the documentary evidence has been reviewed by me. The Parties were also given an opportunity at the hearing to give their evidence orally, to have witnesses attend and to ask questions of the other party. All testimony was taken under oath or affirmation.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This fixed term tenancy started on February 1, 2011, expired on February 12, 2012 and continued on a month-to-month basis thereafter. Rent is \$1,200.00 per month payable in advance on the 1st day of each month.

On March 5, 2012, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 5, 2012 and a One Month Notice to End Tenancy for Cause dated March 5, 2012. The Landlord, D.L., initially said these documents were served by registered mail but then claimed that the documents were posted to the Tenant's door. The Tenant claims these documents were put under her door and she found them some time later under the door mat. The Tenant applied for Dispute Resolution on March 12, 2012 to cancel only the One Month Notice to End Tenancy for Cause and for compensation.

On March 14, 2012, the Landlords served the Tenant in person with two 10 Day Notices to End Tenancy for Unpaid Rent dated March 14, 2012 (one alleging arrears of \$1,440.00 and one alleging arrears of \$1,240.00) and with a One Month Notice to End Tenancy for Cause dated March 14, 2012. The sole ground alleged on this Notice was that the Tenant was repeatedly late paying rent. The Tenant amended her application for Dispute Resolution on March 20, 2012, to cancel a Notice to End Tenancy for Unpaid Rent and to increase the amount of her claim for compensation.

The Landlords claim that the Tenant has made sporadic payments over the term of the tenancy and that based on their records, the Tenant had outstanding rent of \$1,240.00 as of March 14, 2012 when she was served with the 10 Day Notice(s). The Landlords also claim that the Tenant has not made any payments since she was served with the Notices to End Tenancy on March 14, 2012 with the result that April rent is now unpaid.

The Tenant denied that she has rent arrears of \$1,240.00 and claimed instead that she only owes \$600.00 for March 2012. The Tenant said she was prepared to pay this amount to the Landlords however she believed the Landlords were "unscrupulous and unaccountable" and therefore wanted to wait until the hearing to deliver the payment to them so that the Dispute Resolution Officer could witness the payment. The Tenant also claimed that following a verbal dispute in the Landlords' office on or about March 15, 2012, she was advised not to return to that office. The Tenant admitted that she could have asked someone else to deliver the rent payment on her behalf.

The Landlords also claim that the Tenant has been repeatedly late paying rent. The Landlords said based on their records, the Tenant was late paying rent in July, August, September, November and December of 2011 and in January, February and March of 2012. The Landlord, D.L., said the Tenant did not have the Landlords' permission to make the late payments.

The Tenant did not dispute that she made late payments throughout the tenancy as alleged however she argued that she had the permission of the property owner to make the late payments because they were on friendly terms. The Tenant admitted however, that recently she had a falling out with the property owner who (as of December 2011) would no longer condone or accept late rent payments from her. Consequently, the Tenant admitted that she made late rent payments to the Landlords for January, February and March 2012.

Analysis

Section 88 of the Act sets out the various ways a document such as a Notice to End Tenancy may be served. In particular, it provides that a copy may be left in a mail box or mail slot or attached to the door (or another conspicuous place) at the party's residence. I find that that the 10 Day Notice to End Tenancy for Unpaid Rent dated March 5, 2012 and the One Month Notice to End Tenancy for Cause dated March 5, 2012 were served on the Tenant by leaving them under her door.

The Tenant argued that these documents should be cancelled because they were not served properly. However, I note that while the Tenant applied to cancel the One Month Notice dated March 5th on March 12, 2012 she did not apply to cancel the 10 Day Notice that was served the same day and in the same manner. For the reasons set out below, I find that it is a moot point as to whether the Notices served on March 5, 2012 should be cancelled or not. Consequently, this hearing dealt only with the Notices to End Tenancy served on the Tenant in person on March 14, 2012.

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on March 14, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2012. Consequently, the Tenant would have had to do one of the following within 5 days or ***no later than March 19, 2012:***

- pay the amount of arrears alleged on the Notice; or
- pay the amount of arrears the Tenant believed was owed and apply to dispute the balance of the amount alleged to be owed.

I find that the Tenant applied to cancel the 10 Day Notice to End Tenancy dated March 14, 2012 ***on March 20, 2012, one day late.*** Consequently, the Tenant's application should be dismissed on that basis alone. However, even if I were to grant her leave to apply late, I still find that there are no grounds for her application because the Tenant admitted at the hearing that she believes she has unpaid rent of \$600.00 that was due when she received the 10 Day Notice and which remains unpaid. The Tenant said she was willing to pay this amount earlier but that she could not trust the Landlords.

However, s. 26(1) of the Act says "*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.*" Furthermore, s. 66(2)(a) of the Act says that the director may not

extend the time limit under s. 46(4) for a tenant to pay overdue rent unless the extension is agreed to by the landlord. The Tenant admitted at the hearing that she did not have an Order from the Residential Tenancy Branch authorizing her to withhold her rent payment for March 2012 and I find that she did not have the Landlords' or the owner's consent to withhold it pending the hearing.

The Tenant also argued that the Landlords' record of payments was unreliable because she found some missing payments. The Tenant admitted that the Landlords' records were amended to reflect those payments but she still argued that it was "confusing." I find that some of the information recorded on the Tenant's ledger is confusing however I also find that this is largely due to the fact that the Tenant made some rent payments to the owner who issued her receipts but that this information does not appear to have been conveyed to the Landlords (who are property managers). Nevertheless, I find that the Landlords' record of payments is reliable because the Tenant has had an opportunity to account for any missing payments and these have been recorded on her ledger. Having reviewed the evidence of both parties, I find that there are rent arrears of \$1,040.00 as follows:

<u>Month:</u>	<u>Payment Due:</u>	<u>Payment Made:</u>	<u>Balance:</u>
July 2011	\$800.00	\$800.00	\$0.00
August 2011	\$1,200.00	\$1,200.00	\$0.00
September 2011	\$1,200.00	\$1,000.00	\$200.00
October 2011	\$1,200.00	\$1,200.00	\$200.00
November 2011	\$1,000.00	\$1,000.00	\$200.00
December 2011	\$1,000.00	\$1,000.00	\$200.00
January 2012	\$1,000.00	\$1,000.00	\$200.00
February 2012	\$1,000.00	\$960.00	\$240.00
March 2012	\$1,200.00	\$400.00	\$1,040.00

I note that the Tenant's payment for March 2012 was made on March 12, 2012 prior to her being served with the 10 Day Notice dated March 14, 2012. As a result, I find that there are grounds for the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2012 and the Tenant's application to cancel it is dismissed without leave to reapply.

RTB Policy Guideline #38 says "*three late payments are the minimum number sufficient to justify a notice under these provisions.*" The Landlords claimed the Tenant made eight late rent payments without their approval. The Tenant denied this but admitted that she made late rent payments for each of January, February and March 2012 without the approval of the Landlords or owner. Consequently, I find that there are also grounds for the One Month Notice to End Tenancy for Cause dated March 14, 2012 and the Tenant's application to cancel it is dismissed without leave to reapply.

The Landlords requested an Order of Possession as early as possible and therefore, on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent, I find pursuant to s. 55(2)(b) that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlords are entitled to a Monetary Order for the unpaid rent in the amount of **\$1,040.00** to March 31, 2012.

The Landlords also applied for unpaid rent for April 2012. However, as the tenancy will be ending, the Landlords will have an obligation to mitigate or in other words, to try to re-rent the rental unit as soon as is possible. Consequently, I find that the Landlords are entitled to unpaid rent for the period, April 1 – 10, 2012 in the pro-rated amount of **\$400.00**. The Landlords are granted leave to reapply if they incur a loss of rental income after that date. As the Landlords have been successful in this matter, they are also entitled pursuant to s. 72 of the Act to recover from the Tenant the **\$50.00** filing fee for this proceeding.

Conclusion

The Tenant's applications to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 14, 2012 and a One Month Notice to End Tenancy for Cause dated March 14, 2012 are dismissed without leave to reapply. The Tenant's application for compensation is dismissed with leave to reapply, provided that it is not found to be *res judicata* (that is, in the event it was already dealt with on its merits in other proceedings between these parties held on March 7, 2012).

An Order of Possession to take effect 2 days after service on the Tenant and a Monetary Order in the amount of **\$1,490.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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 *Residential Tenancy Act*.

Dated: April 04, 2012.

Residential Tenancy Branch