



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNC, MNDC, MNR, ERP, RP, PSF, LRE, RR, FF, O

Introduction

This hearing was convened in response to cross applications.

On December 21, 2012 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit, for an Order requiring the Landlord to provide services or facilities, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, for authorization to reduce the rent, and for "other".

The Tenant stated that she sent the Application for Dispute Resolution and the Notice of Hearing to the Landlord, via registered mail, on December 10, 2012 or December 11, 2012. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that she has not had time to submit evidence in support of her application and she asked if the evidence she had submitted for a previous dispute resolution proceeding could be considered at this hearing. This request was denied as the evidence previously submitted was not available to me at the time of this hearing.

The Tenant was advised that the application for an Order requiring the Landlord to make repairs to the rental unit, the application for an Order requiring the Landlord to provide services or facilities, and the application for a rent reduction were being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the repairs, services, or facilities needed, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list or any reference to repairs, services, or facilities that are needed. I find that proceeding with the Tenant's application for these Orders would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims. The Tenant retains the right to file another Application for Dispute Resolution for an Order requiring repairs, services, or facilities if the Landlord does not make necessary repairs or provide services or facilities that were agreed upon. The Tenant also retains the right to file another Application for Dispute Resolution for a rent reduction in compensation for the lack of repairs, services, or facilities.

The Tenant was advised that the application for a monetary Order was also being refused, pursuant to section 59(5)(a) of the *Act*, because the Application for Dispute Resolution did not provide sufficient details of that claim. In reaching this conclusion, I was strongly influenced by the absence of a detailed calculation of this monetary claim, as is required by the Application for Dispute Resolution. I find that proceeding with the Tenant's application for a monetary Order would be prejudicial to the Landlord, as the absence of particulars makes it difficult for the Landlord to adequately prepare a response to the claims. The Tenant retains the right to file another Application for Dispute Resolution for a monetary Order.

On January 07, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 10, 2013 the Tenant was served, by registered mail, with the Application for Dispute Resolution and Notice of Hearing. She cited a Canada Post tracking number that corroborates this testimony. She stated that she has checked the Canada Post website and determined that the mail has not been claimed by the Tenant.

The Agent for the Landlord stated that on January 14, 2013 the Tenant was served, by registered mail, with documents the Landlord wishes to rely upon as evidence. She cited a Canada Post tracking number that corroborates this testimony. She stated that she has checked the Canada Post website and determined that the mail has not been claimed by the Tenant.

The Tenant stated that she did not receive a delivery notice for the documents mailed on January 10, 2013 or the documents mailed on January 14, 2013. She stated that mail delivery is sporadic at this address; that she receives some mail, such as a decision regarding a previous dispute resolution hearing mailed by the Residential Tenancy Branch and a Notice to End Tenancy for Cause; that she does not receive all of her mail; that there is a systemic problem with mail delivery in this delivery area; and that Canada Post is well aware of the systemic problem. The Tenant submitted no evidence to corroborate her testimony that there are problems with mail delivery at this address.

The Agent for the Landlord stated that she contacted Canada Post on December 14, 2012 to ascertain whether there were any delivery problems in the area and she was advised that they were not aware of problems with mail at the Tenant's service address.

The *Act* authorizes the Landlord to serve documents by sending them to the Tenant's residential address, via registered mail. On the basis of the testimony of the Agent for the Landlord, I find that the Notice of Hearing and the Landlord's Application for Dispute Resolution were served to the Tenant in accordance with section 89(1)(c) of the *Act* on January 10, 2013 and that documents the Landlord wishes rely upon as evidence were

served to the Tenant in accordance with section 88(c) of the *Act* on January 14, 2013. I found the testimony of the Agent for the Landlord to be direct and consistent.

Section 90 of the *Act* stipulates that documents served by mail are deemed served on the 5th day after they are mailed. I therefore find that the Notice of Hearing and the Landlord's Application for Dispute Resolution are deemed served on January 15, 2013 and the documents the Landlord wishes rely upon as evidence are deemed served on January 19, 2013.

I find that the Tenant cannot avoid service of documents by electing not to pick up her mail. I find that the Tenant's testimony that she did not receive notice of the mail that was sent on January 10, 2013 and January 14, 2013 was not believable. I find it highly unlikely that there would be a systemic delivery problem with Canada Post. In the absence of evidence that corroborates this testimony, such as documentation from Canada Post, I cannot conclude that there was a problem with mail delivery to this address. In reaching this conclusion, I was influenced, to some degree, by the Agent for the Landlord's testimony that she contacted Canada Post and was informed that there are no delivery problems at the Tenant's service address.

In deeming the aforementioned documents served, I was influenced, in part, by the fact that the Tenant provided her mailing address to the Landlord in the Application for Dispute Resolution that was served to the Landlord in December of 2012. In the event that mailing address was not reliable, I find it highly unlikely that the Tenant would have provided it as a service address.

The Landlord and the Tenant were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant was not permitted to provide any evidence that related to the Tenant's application for a monetary Order, the application for an Order requiring the Landlord to make repairs to the rental unit, the application for an Order requiring the Landlord to provide services or facilities, and the application for a rent reduction, unless the evidence was directly related to the claims being considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession, for compensation for unpaid rent, and to recover the filing fee for the cost of the Landlord's Application for Dispute Resolution?

Should the Notice to End Tenancy for Cause be set aside and is there a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord and the Tenant agree that it was determined at a previous dispute resolution proceeding that this tenancy began on August 01, 2012 and that the Tenant was to pay monthly rent of \$900.00 by the tenth day of each month.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was sent to the Tenant, via registered mail, on December 14, 2012. The Notice to End Tenancy declared that the Tenant has failed to pay rent of \$905.70 that was due on December 10, 2012 and that the Tenant must vacate the rental unit by December 29, 2012. The Landlord submitted a Canada Post receipt that corroborates this testimony.

The Tenant stated that she did not receive a delivery notice for the Ten Day Notice to End Tenancy that was mailed on December 14, 2012 for the same reasons she did not receive the documents mailed on January 10, 2013 and January 14, 2013.

The Landlord and the Tenant agree that at a previous dispute resolution proceeding it was determined that the Tenant had the right to withhold rent for October of 2012; that the Tenant did not pay rent for October of 2012; that the Tenant had established a monetary claim of \$618.19, for which she was granted a monetary Order; and that she was told that she could deduct this amount from any rent owed to the Landlord.

The Landlord submitted a copy of the decision from the previous dispute resolution hearing, dated November 21, 2012. In that decision I awarded the Landlord compensation for unpaid rent from September, in the amount of \$50.00. As unpaid rent from September has been previously determined, I decline to consider the Landlord's current claim for unpaid rent from September of 2012.

The Landlord stated that no rent was received for November of 2012. The Tenant stated that she delivered \$900.00 in rent for November, in cash, to the Landlord's business address on November 10, 2012 and that she did not receive a receipt for her payment. The Agent for the Landlord stated that this payment was not received and that receipts are always issued for cash payments. The parties agree that rent was not paid in cash at any other time during the tenancy.

The Tenant stated that she deposited \$908.30 and had the payment transferred to the Landlord by wire transfer on December 10, 2012. The Agent for the Landlord stated that on December 12, 2012 \$894.30 was transferred to the Landlord from the Tenant and this was applied to rent owing for November of 2012. The Landlord is seeking a monetary Order for the outstanding rent for November, in the amount of \$5.70.

The Tenant stated that she deposited \$900.00 and had the payment transferred to the Landlord by wire transfer on January 10, 2013. The Agent for the Landlord stated that on January 12, 2013 \$886.00 was transferred to the Landlord from the Tenant and this was applied to rent owing for December of 2012. The Landlord is seeking a monetary Order for the outstanding rent for December, in the amount of \$14.00.

The Landlord and the Tenant agree that no payments were made after aforementioned January payment.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on December 11, 2012. The Tenant acknowledged receipt of this Notice. This Notice declared that the tenancy will end on January 11, 2013.

The Tenant stated that she wants restrictions placed on the Landlord's right to enter the rental unit because representatives of the Landlord have accessed the residential property on a daily basis and she believes they have been accessing the rental unit. The Agent for the Landlord stated that nobody representing the Landlord has been on the residential property since the start of the tenancy. The Tenant submitted no evidence to corroborate her claim that a representative of the Landlord has accessed the residential property on a daily basis or that a representative of the Landlord has been accessing the rental unit.

Analysis

On the basis of the testimony of the Agent for the Landlord and the Canada Post receipt that was submitted in evidence, I find that a Ten Day Notice to Tenancy was served to the Tenant in accordance with section 88(c) of the *Act* on December 14, 2012. In accordance with section 90 of the *Act*, I find that the Notice to End Tenancy is deemed served on December 19, 2013. For the same reasons previously outlined, I do not accept the Tenant's evidence that she did not receive notice of this delivery and I find that she cannot avoid service by refusing to pick up her mail.

I find that the Tenant submitted insufficient evidence to establish that she paid \$900.00 in cash on November 10, 2012. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a receipt, that corroborates the Tenant's testimony that the payment was made or that refutes the Agent for the Landlord's testimony that it was not made. Given that the Tenant has never paid rent in cash, apart from this alleged November payment, and given that the parties were involved in a dispute resolution proceeding at the time of the alleged payment, which related to rent payment, I find it highly unlikely that the Tenant would have paid her rent in cash without receiving a receipt.

I find that the Tenant's testimony that she deposited \$908.30 and had the payment transferred to the Landlord by wire transfer in December of 2012 to be credible, as it is reasonably consistent with the Agent for the Landlord's testimony that the Landlord received a payment of \$894.30 in December. I find it reasonable to conclude that the difference between the amounts can be attributed to service charges the Tenant paid to have the payment transferred. On the basis of this information I find that the Landlord received a rent payment of \$894.30, as the Landlord is not responsible for service charges incurred by the Tenant and the Tenant submitted no evidence to show that the

entire \$908.30 payment was received by the Landlord. I find that the Landlord was entitled to apply this payment to rent owing for November of 2012 and that the Tenant still owes rent for November of 2012, in the amount of \$5.70.

I find that the Tenant's testimony that she deposited \$900.00 and had the payment transferred to the Landlord by wire transfer in January of 2013 to be credible, as it is reasonably consistent with the Agent for the Landlord's testimony that the Landlord received a payment of \$886.00 in January. I find it reasonable to conclude that the difference between the amounts can be attributed to service charges the Tenant paid to have the payment transferred. On the basis of this information I find that the Landlord received a rent payment of \$886.00, as the Landlord is not responsible for service charges incurred by the Tenant and the Tenant submitted no evidence to show that the entire \$900.00 payment was received by the Landlord. I find that the Landlord was entitled to apply this payment to rent owing for December of 2012 and that the Tenant still owes rent for December of 2012, in the amount of \$14.00.

I find that no payment has been made for rent in January and that the Landlord is entitled to rent for January, in the amount of \$900.00.

Section 46 of the *Act* entitles a landlord to end a tenancy if rent is not paid when it is due. As the Tenant owed rent of \$905.70 when the Ten Day Notice to End Tenancy was served on December 14, 2012 and that no payment was made toward this debt until January of 2013, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord's application for an Order of Possession. As the Tenant will be ordered to pay rent for January of 2013, I find that this Order of Possession will be effective on January 31, 2013.

In determining this matter I determined that even if the Tenant elected to withhold \$618.19 from rent owed in November 2012, as she was entitled to do as a result of the previous dispute resolution proceeding, she would have still owed the Landlord \$287.51 when the Ten Day Notice to End Tenancy was served on December 14, 2012.

As this tenancy is ending in accordance with section 46 of the *Act*, I find no reason to consider the Tenant's application to set aside the Notice to End Tenancy for Cause. In reaching this conclusion I was influenced by my determination that this Notice to End Tenancy would not be effective until after January 31, 2013.

I find that the Tenant has failed to establish the need for an Order setting conditions on the Landlord's right to enter the rental unit. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that representatives of the Landlord have accessed the residential property on a daily basis or that they have accessed the rental unit, and by the absence of evidence that refutes the Agent for the Landlord's statement stated that nobody representing the Landlord has been on the residential property since the start of the tenancy.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing the Application.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 31, 2013. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$969.70, which is comprised of \$919.70 in unpaid rent and \$50.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution. I therefore grant the Landlord a monetary Order in this amount.

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: January 23, 2013

Residential Tenancy Branch

