



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MNDC MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for unpaid rent or utilities, to cancel a 1 Month Notice to End Tenancy for cause, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to return all or part of the security deposit and pet damage deposit.

The tenant, landlord "AC" (the "landlord"), and four witnesses for the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing.

The landlord confirmed that he received evidence from the tenant prior to the hearing and that he had the opportunity to review that evidence prior to the hearing. The tenant disputed receiving the landlords' evidence. The landlord testified under oath that he served the landlords' evidence on the tenant at the rental unit on October 1, 2013 and that he had a witness, caretaker DM. DM was called as a witness and DM testified under oath that he personally witnessed the landlord serve a package on the tenant at the beginning of October in the morning or the end of September 2013. Witness DM stated that at first, the tenant dropped the package and then picked up the package. The tenant decided not to ask witness DM any questions in response to his testimony during the hearing.

Based on the above, I am satisfied that the tenant was served with the landlord's evidence. Although the tenant did not specifically ask for an adjournment during the hearing, she did request to have the evidence and in the interests of fairness I interpreted her statement as a request for an adjournment for service of evidence. I decided not to adjourn this matter as I find there would be a greater prejudice to the landlord due to the effective dates of the 10 Day Notice and 1 Month Notice having

already passed, and I am satisfied that the tenant was served based on the testimony of the landlord which was supported by the witness for the landlord.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and the 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”). I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice and the 1 Month Notice at this proceeding. The balance of the tenant’s application is dismissed with leave to reapply.

The tenant stated that she was also disputing that the landlords have disturbed her “peaceful tenancy”. The tenant was advised that as per section 2.3 of the Rules of Procedure, I was severing all other portions of her request including her claim for a monetary order and that I was only considering her application to cancel the 10 Day Notice and the 1 Month Notice. I note that the tenant did not apply for “other” in her application.

Background and Evidence

The parties disputed the start date of the tenancy but agreed that the tenancy was a month to month tenancy agreement. Neither party supplied a copy of the tenancy agreement in evidence. The landlord stated that the tenant moved into her current rental unit and that the tenancy began on February 1, 2012. The tenant stated that the tenancy began “a little earlier” and then changed her testimony by stating that the tenancy began in December 2012, which is ten months later than the landlord stated the tenancy began. The parties agreed that monthly rent is \$475.00 due on the first day of each month.

The tenant confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) from the landlords dated September 4, 2013 on September 4, 2013. The tenant disputed the 10 Day Notice within the required timelines under section 46 of the *Act* by immediately disputing the 10 Day Notice. The 10 Day Notice states that \$495.00 in unpaid rent was due on September 1, 2013. The landlord testified that \$475.00 was due for September 2013 rent, and the remaining \$20.00 was

due from the month prior, August 2013. The parties agreed that the tenant owed \$20.00 from August 2013 and still owed \$75.00 for September 2013 as of the date of the hearing.

The effective vacancy date on the 10 Day Notice was September 14, 2013. The tenant continues to occupy the rental unit. The landlord stated that the tenant paid a portion of rent for October 2013 which the landlord put into a trust account as the landlord was clear that he was not re-instating the tenancy. The tenant did not dispute that she failed to pay the full amount of rent for October 2013.

The tenants stated that when she moved into the rental unit, the landlords owed her \$400.00 as a credit for her cleaning the rental unit. The landlord disputed the testimony of the tenant. The landlord stated that no agreement or credit was agreed to and that the landlord did not owe the tenant a credit of \$400.00. The tenant confirmed that she did not submit any documentary evidence to support that the landlords owed her a credit of \$400.00 during the tenancy.

As the tenant confirmed that she failed to pay the full amount of rent as alleged in the 10 Day Notice, I determined it was not necessary to consider the 1 Month Notice. The landlord verbally requested an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The landlords issued a 10 Day Notice on September 4, 2013 for \$495.00 in unpaid rent owing as of September 1, 2013. The tenant agreed during the hearing that she owed \$20.00 for August 2013 rent, and \$75.00 for September 2013 rent. Based on the above, **I find** that the 10 Day Notice dated September 4, 2013 is valid as the tenant confirmed that the full amount owing was not paid within 5 days of receiving the 10 Day Notice on September 4, 2013. Therefore, **I dismiss** the tenant's application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice issued by the landlords which had an effective vacancy date of September 14, 2013 as it is valid.

Once I dismissed the tenant's application to cancel the 10 Day Notice, the landlord verbally requested an order of possession. Pursuant to section 55 of the Act, I must grant the landlords an order of possession once I have dismissed the tenant's application to dispute the 10 Day Notice or have upheld the 10 Day Notice. Therefore, **I grant** the landlords an order of possession for unpaid rent **effective two (2) days after**

service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find it was not necessary to consider the 1 Month Notice in this proceeding as the tenancy ended in accordance with the 10 Day Notice which I have upheld as valid. I find the landlord did not reinstate the tenancy for October 2013 rent held in trust based on the landlord's testimony which the tenant did not dispute.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. I find it is not necessary to consider the 1 Month Notice as I have upheld the 10 Day Notice issued by the landlord dated September 4, 2013 as valid.

I grant the landlord an order of possession **effective two (2) days after service on the tenant.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 11, 2013

Residential Tenancy Branch

