



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peachland Legion
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNR, OLC, RP, PSF, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice for unpaid rent or utilities; a Monetary Order for the cost of emergency repairs; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; for the landlord to provide services or facilities required by law; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss

unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the 10 Day Notice to End Tenancy for unpaid rent and I will not deal with the remaining sections of the tenants claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started on October 01, 2010 for a month to month tenancy. Rent for this unit is \$650.00 per month and is due on the 1st day of each month.

The landlord testifies that the tenant failed to pay rent for October on the day it was due. A 10 Day Notice to End Tenancy was served upon the tenant on October 05, 2013 by posting it to the tenant’s door. This Notice states the tenant has five days to either pay the outstanding rent of \$650.00 or dispute the Notice or the tenancy will end on October 16, 2013. The tenant did not pay the outstanding rent and has also failed to pay rent for November, 2013.

The landlord requests that the 10 Day Notice to End Tenancy is upheld and seeks an Order of Possession effective as soon as possible.

The tenant agrees that he did not pay the rent for October and November, 2013.

Analysis

Section 26 of the *Act* 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.

Both parties agree that rent is due on the first day of each month and the tenant agrees that he has a balance of rent outstanding for October and November, 2013. I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the Act. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the door of the tenants unit it is deemed served three days later and therefore the date of the Notice has been amended to October 18, 2013 pursuant to s. 53 of the Act.

Based on the foregoing, I find that the tenant owes rent to the landlord for October and November and consequently the Notice is upheld and the tenant's application to dispute the Notice is dismissed. Section 55 (1) of the Act states that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession at the hearing. Therefore pursuant to s. 55 (1) of the Act and I grant the landlord an order of possession.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The tenant's application for the cost of emergency repairs and to allow a tenant to reduce rent for repairs, services and facilities agreed upon but not provided is dismissed with leave to reapply.

The remainder of the tenant's application not heard today is dismissed without leave to reapply. As the tenancy is ending these sections will no longer be enforceable after the tenancy ends.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with the Order it may be filed in the Supreme Court and enforced as an Order of that Court.

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: November 21, 2013

Residential Tenancy Branch

