



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MNR, MNSD, FF

Tenant: CNR, CNC, MNDC, OLC, RP, LRE, LAT, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy and orders to have the landlord complete repairs; to authorize the tenant to change locks; to restrict the landlord's access to the rental unit; and to reduce rent for repairs not completed.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The landlord arranged for a witness but he was not called to provide testimony. The tenant had arranged for 3 or 4 witnesses but none were called to provide testimony.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy and a number of the orders sought would only be required if the tenancy continued, I find that the additional orders sought by the tenant are unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenant's Application seeking orders for repairs; to authorize the tenant to change locks; to suspend the landlord's right to access the rental unit and for a rent reduction, with leave to reapply at a future date.

The landlord clarified, at the outset of the hearing, that while her original Application for Dispute Resolution indicated she was seeking a monetary order for \$2,563.00 in unpaid rent she is only seeking a monetary order in the amount of \$663.00.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant must serve the respondent with copies of, among other things, the details of any monetary claim and any other evidence the applicant intends to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent as soon as

possible and at least 5 days prior to the prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between.

Upon review of the evidence from both parties I find no reasons why both parties' evidence could not have been served at the time their respective Applications were made. Therefore, I find both parties have provided their evidence late.

The landlord submitted her Application for Dispute Resolution on January 10, 2014 and testified that she served her evidence to the tenant by registered mail on February 8, 2014. As I have found that the landlord could have served her evidence at the time she filed her Application I find the landlord's evidence was served late.

The tenant submitted her Application for Dispute Resolution on January 8, 2014 and testified that she served her evidence to the landlord by registered mail on February 14, 2014. As I have found that the tenant could have served her evidence at the time she filed her Application I find the tenant's evidence was served late.

However, as both parties had each other's evidence in sufficient time for this hearing I have accepted both parties evidence and have considered the evidence that is relevant to the notices to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 46 and 47 of the *Act*.

Background and Evidence

Both the landlord and the tenant provided a copy of a tenancy agreement signed by the parties on December 13, 2013 for a 1 year fixed term tenancy beginning on beginning on January 1, 2014 for a monthly rent of \$1,900.00 due on the last day of each month proceeding the rental month with a security deposit of \$950.00 paid.

The landlord has submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 3, 2014 with an effective vacancy date of January 13, 2014 resulting from unpaid

rent in the amount of \$1,900.00 due on January 1, 2014. The landlord submits this Notice was served by registered mail on January 3, 2014 and a portion of an email in the tenant's evidence confirms the tenant had received this Notice on January 5, 2014; and

- A copy of a 1 Month Notice to End Tenancy for Cause issued on January 7, 2014 with an effective vacancy date of February 7, 2014 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In regard to the 1 Month Notice to End Tenancy for Cause the landlord described events of the tenancy up to the issuance of the Notice – 7 days after the tenancy began. Specifically the landlord testified that the tenant had refused to let the landlord enter the rental unit to conduct a condition inspection.

The landlord submits that she has concerns regarding the condition of the rental unit as the tenant continues to refuse the landlord entry into the unit. The landlord also submits that the tenant lied regarding her employment and that after a search on the internet they have grounds to believe the tenant is an escort and that her phone number and the address of the rental unit is online.

The landlord asserts that she is concerned that the tenant is conducting an illegal escort service out of the rental unit. However, other than the internet search material the landlord confirmed that she has no evidence to conclude that any illegal business activity has been conducted on the rental property.

In regard to the payment of rent for the month of January the landlord submits that she had received a cheque from BC Housing in the amount of \$1,237.00 for a portion of the rent owed but that she did not receive any other monies from the tenant, leaving arrears in the amount of \$663.00.

The parties agree that when the tenant and landlord signed the tenancy agreement the tenant provided the landlord with \$950.00 cash as a security deposit. The parties also agree that the tenant later returned with a cheque from BC Employment and Assistance in the amount of \$950.00 for the security deposit.

The landlord testified that when the tenant provided a cheque for the deposit she refunded the tenant \$950.00 cash. The landlord testified that she did not produce any documentation to confirm how much cash was returned to the tenant, such as refund statement and she did not provide into evidence a tenant ledger recording payments or disbursements.

The tenant submits the landlord retained \$640.00 and returned only \$310.00. The tenant submits that she asked the landlord to do so to contribute the balance to rent for January 2014. The tenant testified that BC Housing had not yet determined how much

she would be receiving and she estimated that it would be less than \$640.00 required for her to have to pay.

In the landlord's documentary evidence she has submitted some text messages that she has noted the tenant is suggesting that the landlord return only \$310.00 and retain \$640.00 towards the balance of rent for the first month's rent. The landlord has written a notation on this evidence that she returned \$950.00 in cash.

The tenant submits that even though she knew she had left the landlord with the \$640.00 to prevent her from losing the rental accommodation she obtain a cheque from BC Employment and Assistance in the amount of \$633.00 on January 13, 2014 but that the landlord refused to accept the cheque and that she later in January got another cheque in the same amount and again the landlord refused to accept the cheque. The landlord confirmed this.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As the landlord has provided no evidence to substantiate that the tenant has conducted any illegal business contrary to the terms of the tenancy agreement and as the landlord has provided no evidence that she provided a written notice to the tenant to correct the situation I find the landlord has failed to provide sufficient evidence to establish this a cause to end the tenancy under Section 47. I dismiss this portion of the landlord's claim.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Based on the evidence provided by the landlord that indicates that the tenant did at least offer to have the landlord retain \$640.00 from the cash refund to be put towards the January rent and in the absence of any documentary evidence from the landlord to confirm how much she return, I find, on the balance of probabilities that landlord did retain \$640.00 from the deposit for the purposes of January 2014 rent.

However, as the outstanding amount of rent when the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent was \$663.00, the tenant was obligated to provide the landlord with an additional \$23.00 no later than 5 days after receiving the Notice.

As per the tenant's evidence that Notice was received by January 6, 2014 I find that she had until January 11, 2014 to provide the landlord with \$23.00. Despite the tenant's attempts to provide the landlord with a cheque in the amount of \$663.00 for the full amount argued by the landlord the landlord did not receive that cheque until January 13, 2014 or two days after the January 11, 2014 deadline.

Based on the above, I find the outstanding amount of rent for the month of January is \$23.00 and that the tenant failed to pay this amount within the required time, despite her attempts to pay it after the deadline. As such, I dismiss this portion of the tenant's Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$73.00** comprised of \$23.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$950.00 in satisfaction of this claim leaving a balance in the security deposit of \$877.00 to be disbursed in accordance with the *Act* at the end of the tenancy.

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: February 21, 2014

Residential Tenancy Branch

