



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, CNL, MNDC, LAT, LRE
For the landlord: MNSD, OPR, MNR, MNDC, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “ 10 Day Notice”), an order cancelling the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of the Property (the “ 2 Month Notice”), a monetary order for money owed or compensation for damage or loss, an order authorizing the tenant to change the locks to the rental unit, and an order suspending or setting conditions on the landlord’s right to enter the rental unit.

The landlords applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

At the beginning of the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant’s application dealing with a request for orders for the landlord, an order authorizing the tenant to change the locks to the rental unit, and for monetary compensation are unrelated to the primary

issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dealt only with the tenant's application to cancel the landlords' Notices to end the tenancy and the landlord's application seeking an order of possession for the rental unit and monetary compensation.

Preliminary matter #2-At the 33 minute mark in the hearing, the tenant, who was testifying at that point, began asking, "Hello, hello?" I attempted to inform the tenant that yes, we were still in the hearing and could hear her. The tenant exited the hearing, and dialed back in. I attempted to make contact with the tenant, but she again asked, "Hello, hello?," apparently without hearing me or the landlords. The tenant exited the phone conference, and again, dialed in, this time, with the result of not being able to hear the tenant. This sequence of events occurred a total of 6 times.

During the tenant's attempts to dial into the hearing, the landlords' legal counsel informed me that the landlords' witness had just 10 minutes before he had to leave for another matter.

I did allow the legal counsel to have the witness come into the room and testify. During this time, it became impossible to hear the witness as the tenant continued to dial in and exit the conference, resulting in me locking the hearing so that the tenant was prevented from dialling in.

I continued with the hearing, as the witness only reaffirmed what he had stated in the documentary evidence supplied by the landlords' legal counsel and confirmed received by the tenant. I must further note that by the time the tenant allegedly experienced problems with the teleconference connectivity, I had heard enough oral evidence, including from the tenant, to make a determination of these matters.

I must also note that the landlords' legal counsel questioned the credibility of the tenant as to whether she genuinely could not hear the proceedings, or whether the alleged inability to hear was a ruse, due to the tenant's past records in another province, as noted in their documentary evidence.

Preliminary matter #3-The tenant submitted documentary evidence of approximately 63 pages; however, the package of evidence was delivered to the Residential Tenancy Branch ("RTB") after the close of business, apparently on May 16, 2014, according to the tenant, and was marked as being received by the TRB on May 20, 2014, the next business day.

The landlords submitted that they had not received the evidence at all and the tenant submitted that the evidence had been attached to their door, with proof by way of a witness. The witness, however, did not attend the hearing.

The Dispute Resolution Rules of Procedure (Rules) 3.4 require that any evidence the applicant intends to rely upon and is available at the time the application is made must be filed with the application and served on the RTB and the other party. In all cases, the evidence must be served at least 5 business days in advance of the hearing, with the date the evidence was served and the date of the hearing being excluded from this calculation.

As the tenant's evidence was not filed with her application, or at least 5 business days prior to the hearing, and additionally, with no proof the landlords had been served with her evidence, I therefore find the tenant's evidence was not properly submitted pursuant to the Rules and I have excluded her evidence from consideration for this hearing.

Preliminary matter #4-One of the issues related to a 2 Month Notice to end the tenancy served by the landlords; however, in the documentary evidence there was no copy of that Notice. The legal counsel stated that a copy was submitted with the landlords' documentary evidence.

I confirmed the details of the 2 Month Notice with the landlords and the tenant confirmed such details. I also note that there was no question the tenant received this Notice as she filed an amended application in dispute of such Notice. I must note, however, that it was not ultimately necessary for me to have a copy of that Notice, due to the reasons set hereafter.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and the 2 Month Notice?

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

Although a tenancy agreement was not signed by the tenant, I was provided undisputed oral evidence that this tenancy began on November 15, 2013, that monthly rent was \$1100, that the tenant was responsible to pay 35% of the hydro, and that the tenant paid a security deposit of \$550.

Pursuant to the Rules of Procedure, the landlords proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlords' application-

The landlord submitted that the tenant failed to pay rent of \$1100 on April 1, 2014, as required, and even after written demand, she also failed to pay utilities of \$374.85. Thereafter, according to the landlords, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 2, 2014 by leaving it with the, listing unpaid rent of \$1100 and unpaid utilities of \$374.85 as of April 1, 2014. The effective move-out date listed was April 12, 2014. The tenant filed her application in dispute of the Notice on April 4, 2014.

The landlords asserted that since the issuance of the Notice, no rent payments have been received from the tenant and she now owes rent for May 2014, in the amount of \$1100, as well as for utilities of \$384.85.

In response to my question, the landlords asserted that they made a written demand of the tenant for payment of unpaid utilities.

The landlords stated that they retained an agent to act on their behalf regarding this tenancy, and informed the tenant of such via email communication.

The landlords' witness confirmed that, at the point of the issuance of the Notice, he was acting on behalf of the landlords as their agent, due to the alleged "level of animosity" between the two parties. The witness stated that he attended the rental unit to collect the rent, but was informed by the tenant that the rent money had been spent on errands, asking the landlord's agent to come back. According to the witness, he attended the rental unit again, and was informed by the tenant that her friend now had the rent money, and he served the tenant with the 10 Day Notice.

The witness stated that he gave the tenant multiple options in paying her rent, such as coming to his office, him going to the rental unit, or making other arrangements, with no success.

Tenant's response-

The tenant claimed that the landlord had increased the rent and that she tried repeatedly to pay the rent, but that the landlords refused payment as they would not

open their door. The tenant submitted that the landlord insisted on cash payments for rent and that she refused as no receipt was offered.

The tenant confirmed that she did not pay rent for May, as she was instructed by persons at the Residential Tenancy Branch ("RTB") not to pay rent, pending the outcome of this hearing.

Landlords' response-

The landlord submitted that he had never attempted to increase the rent and had never refused rent payments.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within five days; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlords submitted sufficient oral and documentary evidence that the tenant owed the landlords rent and utilities when the Notice was issued and that she did not pay any rent or utilities owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and utilities and the landlords are entitled to regain possession of the rental unit.

I find that the landlords are entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$1100 for unpaid rent for April 2014, \$1100 for unpaid rent for May 2014, and utilities of \$374.85.

I therefore find that the landlord is entitled to a monetary award in the amount of \$2624.85, comprised of outstanding rent of \$2200 through May 2014, unpaid utilities of \$374.85, and the \$50 filing fee paid by the landlord for this application.

The landlords submitted that the tenant has not paid the latest utilities; however the landlords confirmed not making written demand of the tenant. I have not awarded the landlords any sums for further unpaid utilities, due to a lack of written demand. The landlords are at liberty to make an application for such unpaid utilities or any other monetary issues, as applicable.

As I have granted the landlords an order of possession for the rental unit based upon their 10 Day Notice, it was not necessary for me to consider the merits of the landlords' 2 Month Notice.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlords has been supported by the landlords and is therefore valid and enforceable.

Conclusion

The landlords' application has been granted.

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlords' request, I allow the landlords to retain the tenant's security deposit of \$550 in partial satisfaction of their monetary award of \$2624.85 and I grant the landlords a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$2074.85, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is dismissed, without leave to reapply.

The portion of the tenant's application dealing with a request for orders for the landlord and an order authorizing the tenant to change the locks to the rental unit is dismissed without leave to reapply as I have granted the landlord an order of possession for the rental unit and therefore the tenancy is ending.

The portion of the tenant's application dealing with monetary compensation is dismissed, with leave to reapply.

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: May 27, 2014

Residential Tenancy Branch

