



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC
Tenant: MT, CNL, MNDC, OLC, LRE

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; an order to restrict the landlord's access to the rental unit; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

The landlord provided documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 22, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

The landlord also provided documentary evidence from Canada Post confirming the tenant refused to accept the hearing documents. The tenant submits that Canada Post refused to release it to her because she did not have identification. As the tenant can provide no evidence to confirm that Canada Post would not release the package I must rely on the landlord's documentary evidence that the tenant refused the package. Therefore, I find the tenant has deliberately attempted to avoid service of the landlord's Application.

Based on the testimony and evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the tenant confirmed that she had not received a 2 Month Notice to End Tenancy for Landlord's Use of Property, as such I find that the issue of whether of cancelling such a notice or granting more time to apply to cancel it are moot.

However, I also note that I have considered that the tenant may have made an error in her Application and intended to apply to cancel the 10 Day Notice to End Tenancy for

Unpaid Rent. As such, I will also consider whether or not she might be entitled to additional time to apply to cancel the 10 Day Notice.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to suspend or set conditions on the landlord right to access the rental unit and a monetary order for compensation, pursuant to Sections 49, 66, 67, 70, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on or before April 1, 2014 as a month to month tenancy for the monthly rent of \$1,100.00 due on the 1st of each month. The landlord submits that the tenant did not pay any rent since the start of the tenancy.

The landlord submits when the tenant failed to pay rent a 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant. The landlord has provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on April 10, 2014 with an effective vacancy date of April 20, 2014 citing the tenant had failed to pay rent in the amount of \$1,100.00 due on April 1, 2014.

The tenant submits that she had tried to pay the rent but the landlord refused to accept it. She states that she attempted three times but he refused each time. The landlord submits the tenant advised the landlord she had a cheque from the Ministry and she needed to go to the bank and she would get the rent for the landlord. The landlord submits the tenant never did pay the landlord.

The parties agree that no rent has been paid for the months of April, May and June 2014.

The tenant submits that she did not apply for dispute resolution until April 22, 2014 because she had been working full time and taking care of children she could not make the time to get to the branch until that date.

The tenant seeks a monetary order in the amount of \$200.00 to hire someone to move her. She also seeks, should the tenancy continue, to set conditions on the landlord's right to access the unit. She states that the landlord had on several occasions entered the rental unit without her consent or knowledge.

Analysis

Section 66 states the director may extend a limit established by the Act only in exceptional circumstances. Exceptional means, according to Residential Tenancy Policy Guideline 36, that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the required time is very strong and compelling.

As the tenant has provided no evidence that she faced exceptional circumstances that prevented her from applying to dispute the 10 Day Notice to End Tenancy for Unpaid rent within the 5 days required, I dismiss the portion of the tenant's Application seeking additional time to dispute the Notice.

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.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As I have determined the tenant is not entitled to additional time to apply to cancel the 10 Day Notice to End Tenancy I find the tenant has failed to apply to dispute the Notice within 5 days and as such, pursuant to Section 46(5) the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant must vacate the rental unit.

By the testimony of both parties I accept that the tenant has not paid rent for the months of April, May and June 2014. I find the landlord is entitled to receive these payments.

As I have determined the tenancy has ended I find the issue of suspending or set conditions on the landlord's right to enter the rental unit is moot and I dismiss this portion of the tenant's Application.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The tenant seeks \$200.00 to hire a moving truck, however the tenant has provided no evidence that she has to move as a result of the landlord violated the Act, regulation or tenancy agreement. In fact, the tenancy is ending because the tenant failed to pay rent. As such, I find the tenant has failed to establish that she is entitled to compensation for the cost of a moving truck. I dismiss this portion of her 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 and I grant a monetary order in the amount of **\$3,300.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 11, 2014

Residential Tenancy Branch

