



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR, MNDC, LAT, RR, OPC, OPR, FF

Introduction

This was a cross-application hearing.

The tenant applied to cancel a Notice ending tenancy for cause and unpaid rent; a monetary Order for damage or loss under the Act; authorization to change the locks, an Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee costs.

The landlord applied requesting an Order of possession based on cause and unpaid utilities and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of evidence submitted by each with the exception of a 2 page and 1 page typed submission sent by the tenant. Those 2 submissions were set aside and the tenant was at liberty to provide oral testimony.

The landlord confirmed receipt of the tenant's amended application. The tenant amended the application to dispute the 2nd Notice issued by the landlord.

The tenant indicated several matters of dispute on his application and confirmed that the main issues to be dealt with during this proceeding were the Notices ending tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to end tenancy for cause and unpaid utilities and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 10 day Notice ending tenancy for unpaid utilities issued on May 1, 2014 be cancelled?

Should the 1 month Notice to end tenancy issued on June 5, 2014 be cancelled?

Is the landlord entitled to an Order of possession for cause or unpaid utilities?

Background and Evidence

The tenancy commenced in October 2012; the tenancy is now a month-to-month term. Rent in the sum of \$2,500.00 is due on the 1st day of each month. A security deposit in the sum of \$1,250.00 was paid. The tenancy agreement, supplied as evidence, indicates that the only utility included with rent is water.

The parties agreed that a 10 day Notice to end tenancy for unpaid utilities was given to the tenant. The Notice was posted to the tenant's door on May 1, 2014. The Notice, issued on May 1, 2014, required the tenant to vacate the rental unit on May 15, 2014. The tenant applied to dispute the Notice on May 5, 2014.

The Notice indicated that the tenant owed \$5,440.91 for utilities and a City inspection fee. The landlord had made a hand-written notation on the Notice, indicating the inspection fee had been included in the total owed. The tenant said he has not paid the sums owed as the landlord has been unreasonable and the landlord's daughter has been harassing. The tenant said that putting the amounts together on the Notice was unfair.

A copy of a decision issued on June 2, 2014 (file 819531) was supplied as evidence. The landlord was issued a monetary Order in the sum of \$5,440.91. The arbitrator found the tenant owed \$997.48 plus \$338.03 in 2013 utility costs; plus the cost of an inspection completed by the City of Richmond, in the sum of \$4,200.00. The decision was issued on June 2, 2014. The inspection fee was required as a result of the tenant growing marijuana on the rental unit property.

Testimony was given in relation to a 1 month Notice ending tenancy for cause issued on June 5, 2014. The parties were informed that if I determined the 10 day Notice was of force and effect there would be no need to consider the merits of the 1 month Notice issued by the landlord.

During the hearing the tenant confirmed that he has changed the locks to the rental unit some time ago. The landlord said they did not have a copy of the key. Therefore, pursuant to section 62(3) I Ordered the tenant to provide the landlord with a copy of a key to the rental unit by placing it in the mail, on the date of the hearing, and sending it to the landlord's service address indicated on the landlord's application.

Analysis

Section 90 of the Act determines that a document posted to the door is deemed served on the 3rd day after posting. Therefore, I find that the tenant received the Notice effective May 4, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 4, 2014, I find that the earliest effective date of the Notice is May 14, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on May 15, 2014; the effective date indicated on the Notice.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding utilities or to file an Application for Dispute Resolution to dispute the Notice. When a tenant disputes the Notice they must come to the hearing prepared to prove they have paid the amounts owed.

I have considered the sum indicated on the Notice and the possible prejudice to the tenant as a result of the landlord including the cost of an inspection fee in the total sum showing as utilities owed. Inspection fees are not utilities and should not be included on a Notice as such. There was a notation on the Notice; alerting the tenant to the fact the inspection fee had also been included. During the hearing the tenant did not indicate any confusion in relation to the sum owed for utilities. He did not dispute the Notice as the result of the sum indicated on the Notice, but as a result of the landlord's intransigence, in wanting payment. At no time did the tenant express any doubt that the landlord wished payment for the utilities; it was the landlord's demand for payment that the tenant objected to.

Section 52 of the Act provides:

Form and content of a notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I find that the Notice meets the requirements of section 52 of the Act and that the Notice is of full force and effect. The tenant only had to pay the sum he understood was owed for utilities, which would have then invalidated the Notice. The tenant's testimony leads me to find, on the balance or probabilities, that he knew full well what he owed the landlord for utilities but did not wish to pay the sum in total, as the landlord had requested.

The decision issued on June 2, 2014 indicated that the parties had reached written agreement in June 2013, setting out the tenant's responsibility for utility costs. The landlord now has a monetary Order requiring payment of the sums the tenant failed to pay.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution. The landlord may deduct \$50.00 from the security deposit. The balance of the security deposit will now be \$1,200.00.

The tenant's application is dismissed.

Conclusion

The landlord is entitled to an Order of possession for unpaid utilities.

The landlord may deduct the \$50.00 filing fee from the security deposit.

The tenant is Ordered to immediately provide the landlord with a key to the rental unit.

The tenant's application is dismissed.

This decision is final and binding 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: June 24, 2014

Residential Tenancy Branch

