



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNDC FF
 CNR RP FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for unpaid rent and I dismiss the Tenant's request for repairs, with leave to re-apply if this tenancy continues.

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

Am applying for a order of possession, rent for June and July and to keep the security deposit. Tenant was served with a 10 Day Notice to vacate on June 2, 2015.

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on July 03 2015, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on June 12, 2015 seeking an Order to cancel the notice to end tenancy for unpaid rent and orders to have the Landlords make repairs to the unit, site, or property.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony and confirmed receipt of the application for Dispute Resolution, the Notice of hearing documents, and evidence from the other. The Tenant noted that she had received some more evidence from the Landlord the week prior to this hearing. She indicated she had reviewed that evidence prior to this hearing. That additional evidence did not relate to the matters pertaining to the eviction Notice for non-payment of rent so will not be considered in this Decision.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's evidence and testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. If upheld, is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to a Monetary Order for June and July 2015 rent?

Background and Evidence

It was undisputed that the parties entered into a verbal month to month tenancy agreement. The Tenant was provided possession of the rental unit at the end of November 2013 and was required to pay rent effective December 1, 2013. Rent was payable on the first of each month in the amount of \$550.00 and sometime around December 1, 2013 the Tenant paid a total of \$275.00 as the security deposit.

The Landlord submitted evidence that when the Tenant failed to pay her June 1, 2015 rent he served her with a 10 Day Notice for unpaid rent on June 2, 2015 by placing the Notice in the mail slot through the Tenant's door. The Landlord asserted that he had made a clerical error in writing number "05" for the month which the Notice was issued and due instead of "06" as it was June rent that was unpaid at the time he served the Notice on June 2, 2015.

The Tenant continues to occupy the rental unit and has not paid rent for June or July 2015. As a result the Landlord wishes to proceed with his application for an Order of Possession and a Monetary Order for June and July rents totaling \$1,100.00 (2 x \$550.00).

The Tenant confirmed that she received the 10 Day Notice in June 2015 and that she knew it was served in relation to her not paying her June 2015 rent. She acknowledged that she has not paid rent for June or July 2015 and argued that she has withheld her rent payments after she found out the Landlord had been using her hydro. She submitted that she recently found out that the Landlord's garage was hooked up to her hydro meter and that she had been paying for that hydro usage when the Landlord was conducting renovations. The Tenant asserted that she did not file an application for Dispute Resolution regarding the hydro usage as she did not understand.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on June 2, 2015, and they filed an application to dispute that Notice on June 12, 2015. The effectiveness of the 10 Day Notice was suspended pending the outcome of this hearing which was not scheduled to be heard until July 31, 2015.

Upon review of the Notice, I do not find the clerical error of writing the 5th month instead of the 6th month to be fatal to the effectiveness of the Notice as the Tenant confirmed she understood the Notice pertained to her failure to pay June 2015 rent. Accordingly, I find the Notice to be in full force and effect.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Notwithstanding the Tenant's submissions that the Landlord had been using her hydro, I find the Tenant submitted insufficient evidence that would exclude her from the requirement to pay rent. As rent remained unpaid I find in favor of the Landlord's application and grant his request for an Order of Possession.

It was undisputed that rent of \$550.00 was due on the first of each month. The Landlord had entitlement to the payment of rent pending the outcome of this hearing which was not scheduled to be heard until July 31, 2015. The Tenant did not pay rent for June or July 2015 and she continues to occupy the rental unit, which I find to be in breach of section 26 of the Act. Accordingly, I grant the Landlord's application for unpaid rent in the amount of **\$1,100.00** (2 x \$550.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order –The Landlords’ monetary claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants’ security deposit plus interest as follows:

Unpaid June and July 2015 Rent	\$1,100.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,150.00
LESS: Security Deposit \$275.00 + Interest 0.00	<u>-275.00</u>
Offset amount due to the Landlord	<u>\$ 875.00</u>

As I have upheld the 10 Day Notice and found in favor of the Landlord’s application, the Tenant’s request to cancel the Notice is now moot. Accordingly, I dismiss the Tenant’s application in its entirety.

Conclusion

The Landlord was successful with their application and has been granted an Order of Possession and a monetary awarded of \$1,150.00 which was offset against the Tenant’s security deposit, leaving a balance owed to the Landlord of \$875.00.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order for **\$875.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the B.C. Small Claims Court and enforced as an Order of that Court.

The Tenants application was dismissed in its entirety.

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: July 31, 2015

Residential Tenancy Branch

