



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trophy Enterprise Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, MNSD, FF
Tenant: MT, CNR, MNDC, ERP, RPP, LRE, LAT, LRE, 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 more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; a monetary order; an order to have the landlord complete repairs; return the tenant's personal property; suspend or set conditions on the landlord's right to enter the rental unit; authorize the tenant to change the locks to the rental unit; and allow the tenant to reduce rent.

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

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenant's other claims. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for a monetary order; an order to have the landlord complete repairs; return the tenant's personal property; suspend or set conditions on the landlord's right to enter the rental unit; authorize the tenant to change the locks to the rental unit; and allow the tenant to reduce rent. I grant the tenant leave to re-apply for her other claims.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; 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, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled more time to apply to dispute a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 66 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on August 11, 2014 for a 1 year fixed term tenancy beginning on September 1, 2014 for the monthly rent of \$900.00 due on the 1st of each month and a security deposit of \$450.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 3, 2015 with an effective vacancy date of September 16, 2015 due to \$900.00 in unpaid rent.

The landlord testified the tenant failed to pay the full rent owed for the month of September 2015 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 3, 2015 at 12:40 p.m. and that this service was witnessed by a third party.

The landlord acknowledged, in the hearing, that she had been made aware that the tenant was away from the rental unit on the date it was posted and that she was not expected to return until October 4, 2015. The landlord testified that as of the time of the hearing, the tenant has not paid rent for the months of September, October and November 2015.

The tenant testified that received the landlord's Notice to End Tenancy for Unpaid Rent on September 24 or 25, 2015. However, in later testimony the tenant testified that she had originally expected to return on October 4, 2015 but she actually returned on September 18, 2015. I also note that on her Application for Dispute Resolution the tenant indicated that she had received the 10 Day Notice on September 21, 2015. The tenant submitted her Application for Dispute Resolution on September 22, 2015.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenant provide a significant amount of testimony regarding concerns that she had regarding her tenancy and the landlord's failure to resolve a number of issues including repairs and the tenant's suspicions that someone had entered her rental unit.

The tenant provided no specific reason as to why she did not pay the landlord any rent for the months of September, October or November 2015 or any allowable reason under the Act to withhold any rent payments.

Analysis

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

As the tenant has provided no evidence or testimony that she had any authority under the *Act* to withhold any portion of the rent from the landlord I find the landlord is entitled to end the tenancy pursuant to Section 46.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent that complies with all of the requirements under Section 52 and the landlord is entitled to an order of possession.

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 **\$2,750.00** comprised of \$2,700.00 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 \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of

\$2,300.00. 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: November 25, 2015

Residential Tenancy Branch

