



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, RP, ERP

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord and for an order requiring the landlord to make repairs and emergency repairs to the rental unit.

The tenant/applicant, the landlord and "CL" attended the hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. I note that CL was not listed as an applicant; however, CL was an originally named tenant for this tenancy and he was allowed to participate in the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter- I have determined that the portion of the tenant's application dealing with a request for orders for the landlord is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and the hearing proceeded on the tenant's request to cancel the Notice. A determination of the remaining portion of the tenant's application will be made at the conclusion of this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on August 26, 2014, for a monthly rent of \$1200.00 and a security deposit of \$600.00 paid by the tenants.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the Notice.

The landlord submitted that the tenant were served with the Notice on November 5, 2015, by attaching the Notice to the tenant's door and by putting a copy in the tenant's mailbox, listing an unpaid rent deficiency of \$5000.00 owed as of November 1, 2015. The effective move-out date listed was November 19, 2015. The landlord submitted a copy of the Notice into evidence.

The tenant disputed that the service of the Notice was as the landlord stated, rather the landlord appeared at her workplace and thrust the Notice at her.

The landlord asserted that since the issuance of the Notice, he has not received rent from the tenant.

The landlord submitted evidence for this hearing, which shows that the landlord has filed his own application for dispute resolution set for hearing on another date on related matters.

Tenant's response-

In response, the tenant confirmed that she did not pay rent for November 2015, due to the unsafe living conditions in the rental unit that have existed for many months. The tenant submitted that the landlord has failed to make required repairs for many months.

The tenant confirmed that she has not made any repairs herself.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. In this case, the tenant disputed the Notice by filing her application; 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.

Upon hearing from the parties and reviewing the undisputed evidence, I find that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

As I have dismissed the tenant's application seeking cancellation of the Notice, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1) of the Act. The order of possession is enclosed with the landlord's Decision. Should the tenant fail

to vacate the rental unit pursuant to the terms of the order after it has been served upon her, 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.

As I have dismissed the tenant's application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of the tenant's application for orders for the landlord as the tenancy is ending.

Conclusion

The tenant's application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit.

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: January 15, 2016

Residential Tenancy Branch

