



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR, MNDC, ERP, RP, OLC, RR, PSF, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- to cancel a Notice to End Tenancy for Cause;
- to cancel a Notice to End Tenancy for Unpaid Rent;
- for a monetary Order for money owed or compensation for damage or loss;
- for authority to reduce the rent;
- for an Order requiring the Landlord to make repairs/emergency to the rental unit;
- for an Order requiring the Landlord to provide services or facilities;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement; and
- to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that on January 08, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on January 13, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted no evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

The Tenant submitted an Amendment to an Application for Dispute Resolution, which is dated January 07, 2016, in which she applied for more time to cancel a Notice to End Tenancy.

The Tenant stated that she did not serve this Amendment to an Application for Dispute Resolution to the Landlord. The Landlord stated that he did not receive a copy of this Amendment to an Application for Dispute Resolution.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulates that:

- an applicant may amend an Application for Dispute Resolution without consent if the dispute resolution hearing has not yet commenced;
- if the Application has not been served on any respondent, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended Application on each respondent as soon as possible;
- if the Application has been served, a copy of the amended Application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing; and
- an amended Application must be clearly identified and must be provided separately from all other documents.

On the basis of the undisputed testimony, I find that the Amendment to an Application for Dispute Resolution has never been served to the Landlord. I therefore find that the Tenant has not amended her original Application for Dispute Resolution to include an application for more time to cancel a Notice to End Tenancy in accordance with rule 2.11 of the Residential Tenancy Branch Rules of Procedure.

As the Landlord has not been informed of the Tenant's intent to apply for more time to cancel a Notice to End Tenancy, I am unable to consider the application for more time at these proceedings.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I am therefore considering the most urgent issues in dispute, which are the application to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Unpaid Rent.

The remaining issues in dispute are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause and/or the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began approximately four years ago;
- the current rent is \$765.50, due by the first day of each month; and
- the Tenant is still living in the rental unit.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, dated December 18, 2015, on the door of the rental unit on December 18, 2015. The Tenant stated that she is not certain when she received this Notice to End Tenancy; that she may have received it on December 18, 2015; and that she certainly received it prior to December 22, 2015.

The Landlord and the Tenant agree that the Ten Day Notice to End Tenancy declared that rent of \$1,655.00 that was due on November 01, 2015 had not been paid.

The Landlord stated that when the Ten Day Notice to End Tenancy was served the Tenant owed \$765.50 in rent for August of 2015 and \$765.50 in rent for October of 2015, which totals \$1,531.00. He stated that he is not certain, but he believes the amount owing as declared on the Ten Day Notice to End Tenancy included late fees that had accumulated.

The Landlord and the Tenant agree that on December 22, 2015 the Tenant provided the Landlord with three cheques, two of which for \$765.50 and one of which was for \$214.34. The parties agree that this payment was for outstanding rent for August, October, and December of 2015, less \$551.16.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution hearing after which the Tenant was given authority to recover \$551.16 by withholding rent, which she withheld when she made the payments on December 22, 2015.

The Landlord stated that he posted a One Month Notice to End Tenancy for Cause, dated December 18, 2015, on the door of the rental unit on December 18, 2015. The Tenant stated that she is not certain when she received this One Month Notice to End Tenancy; that she may have received it on December 18, 2015; and that she certainly received it prior to December 22, 2015.

The One Month Notice to End Tenancy for Cause declares that the Landlord is seeking to end the tenancy because the Tenant has been repeatedly late paying rent.

The Tenant stated that she filed an Application for Dispute Resolution seeking to cancel the One Month Notice to End Tenancy shortly after she received the One Month Notice to End Tenancy, although she cannot recall the date she filed that Application for Dispute Resolution.

Although the online Application for Dispute Resolution is dated January 06, 2016, Residential Tenancy Branch records show that the Application for Dispute Resolution was first filed on December 28, 2015 and that, due to an administrative error, the Application was incorrectly considered to be abandoned. Residential Tenancy Branch records show that the Tenant paid the filing fee for this Application for Dispute Resolution on December 31, 2015.

The Landlord stated that the rent was not paid when it was due on May 01, 2015 or June 01, 2015. He stated that he does not have a receipt or payment log with him at the hearing so he is unable to state when rent was paid for May or June of 2015 but he knows it was late because he served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on May 12, 2015 and on June 24, 2015.

The Tenant stated that she paid her rent for May on May 01, 2015 and that she paid her rent for June on June 01, 2015. She stated that the Ten Day Notices to End Tenancy for Unpaid Rent for May and June of 2015 was posted on the door of her rental unit; that she then showed the Landlord a receipt that showed she paid her rent for May on May 01, 2015 and for June on June 01, 2015; and that the Landlord accepted that the rent had been paid on time after she produced the receipts.

The Landlord stated that it is possible the Tenant produced a rent receipt showing she paid her rent on May 01, 2015 after he served the Ten Day Notice to End Tenancy.

The Landlord stated that he does not recall if the Tenant produced rent receipt showing that she paid her rent on June 01, 2015. He stated the employee who typically collects the rent cheques passed away during this time and it is entirely possible that the rent for June was paid on time and there was an administrative error as a result of the death of an employee.

The Landlord stated that the rent was not paid when it was due on July 01, 2015. He stated that he is not certain when rent was eventually paid for July but he knows the payment was late because he served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on July 02, 2015.

The Tenant stated that she does not know if she paid her rent for July on July 01, 2015 or July 02, 2015.

The Landlord and the Tenant agree that rent for August of 2015 was not paid until December 22, 2015, although the Landlord was provided with a cheque for rent for August. The Landlord stated that he told the Tenant her rent cheque for August of 2015 could not be cashed, although he cannot recall when he first discussed this with the Tenant.

The Tenant stated that sometime in late September of 2015 the Landlord told him that her rent cheque for August of 2015 had been returned by her financial institution; that

she contacted her financial institution and confirmed that there were sufficient funds in her account; and that there was no record of this cheque being returned by her financial institution.

The Tenant stated that she repeatedly asked the Landlord to return the disputed rent cheque for August of 2013 and he refused to comply with her request. She stated that she would have replaced the August rent cheque if it had been returned to her but she did not wish to replace the cheque without the first cheque being returned as this may have resulted in her rent being paid twice for August of 2015 and she did not wish to incur the cost of cancelling the cheque already in the Landlord's possession.

The Tenant submitted a copy of an electronic communication, dated October 01, 2015, in which she informed the Landlord that her bank does not have a record of a returned cheque and that her bank records show funds are available.

The Tenant submitted a copy of an electronic communication, dated October 06, 2015, in which she appears to be asking the Landlord to provide her with a copy of the August rent cheque and/or an explanation of what the issue is with that cheque.

The Tenant submitted copies of electronic communications, dated October 07, 2015 and October 08, 2015, in which she asks the Landlord to provide her with a copy of the August rent cheque. On October 08, 2015 the Landlord responds to this query by advising the Tenant that he has the cancelled cheque with him and that she can obtain a copy by attending the office during business hours, which he declares are "7/8 or 9 in the morning to closing late after noon 4 or 5/5:30".

In the electronic communications exchanged with the Landlord it is clear that the Tenant is concerned that the rent cheque for August has simply been misplaced, as has been her experience in the past, or an error had been made by the Landlord's financial institution.

The Landlord stated that the rent was not paid when it was due on September 01, 2015. He stated that he is not certain when rent was eventually paid for September of 2015 but he knows the payment was late because he wrote a Ten Day Notice to End Tenancy for Unpaid Rent on September 03, 2015, although he does not know if the Notice was served to the Tenant.

The Tenant stated that she has a receipt that shows she paid her rent for September on September 01, 2015. She stated that she was not served with a Ten Day Notice to End Tenancy for Unpaid Rent in September of 2015.

The Landlord and the Tenant agreed that rent for October of 2015 was not paid until December 22, 2015. The Tenant stated that she did not pay her rent on time for October, in part, because after the problems with her rent cheque for August she wanted a receipt before leaving a cheque for rent for October; she was unable to pay her rent during business hours when the office was open; and she did not want to leave

the payment in the mail slot because she would not receive a receipt at the time of payment.

The Tenant stated that she did not pay her rent on time for October, in part, because she did not want to go to the office because she had been assaulted when she first attempted to pay her October rent.

The Landlord stated that the rent was not paid when it was due on November 01, 2015. He stated that he is not certain when rent was eventually paid for November of 2015 but he knows the payment was late because he served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on November 05, 2015.

The Tenant stated that she paid her rent for November on November 01, 2015, although she did not receive a receipt for this payment. She stated that she was not served with a Ten Day Notice to End Tenancy for November of 2015.

The Tenant submitted a copy of an electronic correspondence, dated November 02, 2015, in which she informs the Landlord that she placed her rent cheque in the office mail box "today".

The Landlord and the Tenant agree that rent for December was not paid until December 22, 2015.

Analysis

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that by December 18, 2015 the Tenant had not paid all of the rent that was due on December 01, 2015. I therefore find that on December 18, 2015 the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on December 18, 2015.

On the basis of the undisputed evidence I find that on December 22, 2015 the Tenant paid all of the rent that was due for any period prior to December 31, 2015.

Section 46(4)(a) of the *Act* stipulates that if a tenant pays all the overdue rent within five days after receiving a Ten Day Notice to End Tenancy for Unpaid Rent, the Notice has no effect. As the outstanding rent was paid within five days of the Ten Day Notice to End Tenancy being posted, I find that the Ten Day Notice to End Tenancy had no effect, pursuant to section 46(4)(a) of the *Act*. I therefore grant the Tenant's application to set aside this Ten Day Notice to End Tenancy for Unpaid Rent, dated December 18, 2015.

On the basis of the testimony of the Landlord I find that the Landlord posted a One Month Notice to End Tenancy for Cause on the door of the rental unit on December 18, 2015. As the Tenant is not certain of when she located this Notice to End Tenancy, I find that the deeming provisions outlined by section 90 of the *Act* must apply.

Section 90(c) of the *Act* stipulates that a document given or served in accordance with section 88 of the *Act* is deemed to be received on the third day after it is posted to a door. I therefore find that the One Month Notice to End Tenancy for Cause that was posted on the door of the rental unit on December 18, 2015 is deemed received by the Tenant on December 21, 2015, pursuant to section 90(c) of the *Act*.

Rule 2.6 of the Residential Tenancy Branch Rules of Procedure stipulate that the point at which an Application for Dispute Resolution is considered to have been filed when the Application for Dispute Resolution has been submitted and the fee has been paid. As the Tenant paid the fee for filing this Application for Dispute Resolution on December 31, 2015, I find it reasonable to conclude that the Application was filed on that date, regardless of any administrative errors that may have occurred.

Section 47(4) of the *Act* stipulates that a tenant who receives a One Month Notice to End Tenancy for Cause may dispute the Notice by filing an Application for Dispute Resolution within ten days after receiving the Notice. As the Tenant is deemed to have received the One Month Notice to End Tenancy on December 21, 2015 and the Application for Dispute Resolution is considered to have been filed on December 31, 2015, I find that the Tenant disputed the One Month Notice to End Tenancy for Cause within the legislated time period.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy, with proper notice, if a tenant is repeatedly late paying rent. When a landlord wishes to end a tenancy on the basis of repeatedly late rent payments, the burden of proving the rent has not been paid on time rests with the landlord.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on May 01, 2015 and June 01, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as ledger or receipts, that establishes when rent was paid in May and June of 2015 or that refutes the Tenant's testimony that rent was paid on May 01, 2015 and June 01, 2015.

I have placed no weight on the undisputed evidence that a Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on May 12, 2015, as the Landlord acknowledged that this Notice may have been posted in error.

I have placed no weight on the undisputed evidence that a Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on June 24, 2015, as there is no evidence to refute the Tenant's testimony that she provided the Landlord with a receipt

to show that rent was paid on June 01, 2015 and that the Landlord then agreed that the Notice had been posted in error.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on July 01, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as ledger or receipts, that establishes when rent was paid for July of 2015. Although the Tenant cannot now recall if she paid her rent for July on July 01, 2015 or July 02, 2015, the onus is on the Landlord to provide clear evidence of when it was paid.

I have placed no weight on the evidence that a Notice to End Tenancy for Unpaid Rent was served to the Tenant on July 02, 2015, as the Landlord submitted no evidence, such as a copy of the Notices, that corroborates his testimony that it was served or that refutes the Tenant's testimony that it was not served.

I find that the Landlord has submitted insufficient evidence to establish that the rent cheque that was tendered by the Tenant for rent in August of 2015 could not be cashed. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the cancelled cheque or a copy of bank records, that corroborates this submission. In the absence of such evidence, I find it entirely possible that the payment was made and the cheque was not cashed as a result of an administrative error on the part of the Landlord or the Landlord's financial institution.

Although I accept that rent for August of 2015 was not paid until December 22, 2015, I find there is insufficient to establish that the Tenant did not pay rent when it was due on August 01, 2015. On the basis of the electronic communications exchanged between the parties I find that the Tenant made a reasonable attempt to remedy the problem with the rent cheque and that the Landlord contributed to the delayed payment by not returning her August rent cheque in a timely manner.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on September 01, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as ledger or receipts, that establishes when rent was paid for September of 2015 or that refutes the Tenants testimony that she has a receipt that shows she paid her rent on September 01, 2015.

I have placed no weight on the evidence that the Landlord created a Notice to End Tenancy for Unpaid Rent on September 02, 2015, as a copy of that Notice was not submitted to corroborate that testimony.

On the basis of the undisputed evidence I find that the Tenant did not pay her rent when it was due on October 01, 2015. Given that the Tenant had the ability to place a cheque, which was her typical method of paying rent, through the mail slot, I cannot find that she had the right to withhold her rent for October until she could receive a receipt for her rent payment. I note that section 26(2) of the *Act* only requires a landlord to provide a receipt for payments that are made in cash.

I find that even if the Tenant had been assaulted when she first attempted to pay her rent for October, in which case she may have been excused from paying her rent on October 01, 2015, she did not have the right to withhold her rent until December 22, 2015 as a result of that assault. In the event that the Tenant did not wish to attend the office to pay rent for any month for fear of further assault, she could have placed it in the office mail slot after business hours or she could have mailed it to the business office.

I find that the Tenant did not pay her rent for November when it was due on November 01, 2015. Although the Landlord does not recall when the rent was paid and the Tenant contends the rent was paid on November 01, 2015, I find that the electronic correspondence sent on November 02, 2015 is the most reliable evidence. As the Tenant informs the Landlord in this electronic correspondence that she paid her rent "today", I find rent for November was paid on November 02, 2015.

On the basis of the undisputed evidence, I find that the Tenant did not pay her rent for December when it was due on December 01, 2015, and that she has not established any legal grounds for withholding her rent.

Residential Tenancy Branch Policy Guideline #38 suggests that three late payments are the minimum number sufficient to end a tenancy pursuant to section 47(1)(b) of the *Act*. Although I have found that the Tenant was late paying her rent on three occasions during this tenancy I find that in these circumstances the tenancy should not end as a result of those three payments.

In reaching this conclusion I was influenced, to some degree, on my belief that the Tenant's ability to pay the rent on time has been thwarted by the Landlord. Given the history of problems with rent cheques being allegedly received by the Landlord and subsequently lost I find it understandable that the Tenant wanted a receipt for her rent payments even when they were paid by cheque. I find it was difficult, if not impossible, for the Tenant to obtain a receipt as she had difficulty attending the office during business hours. This is made very clear in the electronic emails sent by the Tenant.

I find that the Landlord's failure to return the rent cheque for August of 2015 that was allegedly not honoured by the Tenant's financial institution indicates a lack of cooperation that contributed to the Tenant's desire for a rent receipt.

I find that the Landlord's failure to establish clear office hours also indicates a lack of cooperation that contributed to the Tenant's desire for a rent receipt. I find his declaration that the office hours are "7/8 or 9 in the morning to closing late after noon 4 or 5/5:30" was not particularly helpful.

I want to be very clear that the desire for a rent receipt is not grounds to pay rent late when rent can be paid by cheque; however in these particular circumstances I find it to be a mitigating factor. The Tenant should not assume this is grounds to pay rent late at any future time.

As I have determined that in these circumstances being late with rent on three occasions is not cause to end this tenancy in accordance with section 47(1)(b) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy, dated December 18, 2015.

To provide clarity to this tenancy, the Tenant remains obligated to pay rent when it is due by the first day of each month. In the event the Tenant fails to pay rent when it is due at any time in the future the Landlord may have the right to end this tenancy in accordance with section 47(1)(b) of the *Act*.

Given that the Tenant has the ability to pay her rent by placing it through a mail slot at the Landlord's business office, she must do so by midnight on the first day of each month even if she will not receive a receipt, or she must ensure that the Landlord receives the payment on time in some other manner. The onus is always on the Landlord to establish that rent has not been paid on time, which includes establishing that a rent cheque was not placed in the mail slot prior to midnight on the first day of any given month.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Tenant a monetary Order, in the amount of \$50.00, in compensation for the fee paid to file this Application for Dispute Resolution. The Tenant has the right to deduct \$50.00 from a future rent payment or to enforce this monetary Order through Province of British Columbia Small Claims 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 *Act*.

Dated: February 19, 2016

Residential Tenancy Branch

