



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC O PSF RR

Introduction

The Tenant applies for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”); a monetary order for money owed or compensation for damage or loss; an order requiring the Landlord to provide services or facilities; an order permitting the Tenant to deduct the costs of repairs, services or facilities from the rent; and “Other” relief.

The parties attended the teleconference hearing. The Tenant was assisted by J.L., a legal advocate. R.R. was a witness for the Tenant. Also attending the hearing was T.C., a witness for the Landlord.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions.

Preliminary and Procedural Matters

Several orders are being sought by the Tenant, as indicated above. Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant’s application was whether or not the tenancy would continue. Further, the remainder of the relief being sought by the Tenant is monetary in nature. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant’s application to cancel the 10 Day Notice, with leave to reapply at a later date.

Both the Landlord and the Tenant confirmed they had received the other party’s evidence package.

No issues were raised concerning the service of the 10 Day Notice or the Tenant’s Notice of a Dispute Resolution Proceeding.

Issue to be Decided

Should the 10 Day Notice be cancelled?

Background and Evidence

Neither party has tendered a written tenancy agreement as evidence. Indeed, the parties confirmed in their oral testimony there was no written tenancy agreement. However, for the reasons that follow, I find that the parties entered into an oral tenancy agreement. The issues in this proceeding arise from the parties' differing understanding of the terms of the oral tenancy agreement.

The parties agree the tenancy commenced on a month-to-month basis on December 1, 2015. The Tenant's oral testimony is that she owed monthly rent of \$650.00, and that her former roommate, J.R., was obligated to pay an additional \$450.00 per month. The total monthly rent due to the Landlord was \$1,100.00. The Landlord advised rent was due on the first day of each month. The Tenant maintains that when J.R. moved out of the rental unit, she became obligated to pay rent of only \$650.00 per month.

These figures were based upon the Tenant's oral evidence, as well as documentary evidence tendered by the Landlord. The Tenant relies in part on a form used by the Ministry of Social Development and Social Innovation (the "Ministry"). However, I note that the form clearly stipulates that:

This form is NOT a tenancy agreement. This form should be used ONLY if a tenancy agreement is NOT available. This form is for ministry information only. For information on tenancy agreements and rental housing, see the Residential Tenancy Branch website...

The Tenant confirmed she understood the forms were not tenancy agreements.

The Tenant's witness, R.R., briefly gave evidence about the payment of a security deposit to the Landlord. As I have exercised my discretion to dismiss all but the Tenant's application to cancel the 10 Day Notice, with leave to reapply at a later date, R.R.'s evidence was of little use.

As noted above, the Landlord agrees the parties entered into a month-to-month tenancy commencing on December 1, 2015. However, the Landlord disagrees and wishes to be paid the rent he says he is due. The Landlord's oral evidence, supported by his

documentary evidence, is that rent was established at the beginning of the tenancy at \$1,100.00 per month.

When T.C., a witness for the Landlord, was given an opportunity to provide evidence, she declined to add to what the Landlord had already provided.

Analysis

In light of the oral and documentary evidence provided by the parties, and on a balance of probabilities, I find that a month-to-month tenancy began on December 1, 2015. Although initially shared by the Tenant and her former roommate, I find that rent was at all material times \$1,100.00 per month, payable on the first day of each month.

Section 26 of the Act stipulates that Tenants must pay rent when due, unless the Tenant has a right under the Act to deduct all or a portion of it.

The Tenant admits she has not paid rent in full since J.R. moved out of the rental unit. Rather, the Tenant agreed she paid rent of \$650.00 in each of January, February, and March 2016. Although the Tenant says she paid an additional \$500.00 for firewood in January, her monetary claim is not being addressed in this decision. She acknowledges that no rent has been paid for the month of April, in part as a result of information she provided to the Ministry.

Section 46 of the Act permits a Landlord to end a tenancy if rent remains unpaid on any day after the day it is due.

I find that the Landlord issued the 10 Day Notice, which the Tenant acknowledges was received on February 20, 2016, in accordance with the Act. The Tenant confirmed the 10 Day Notice included the following details: the amount of rent owing; the date rent was due; the date the Tenant was required to move out of the rental unit; and a vacancy date of March 1, 2016. The 10 Day Notice was signed and dated by the Landlord.

I find the Tenant has not provided sufficient evidence to demonstrate the 10 Day Notice should be cancelled. The Tenant's application is dismissed and the 10 Day Notice is upheld.

Finally, section 55 of the Act requires me to grant an Order of Possession to a landlord when a tenant's application for dispute resolution is dismissed. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord. The Order will be effective two days after service of the Order on the Tenant. Should the Tenant fail to comply with

the Order, it may be filed in and enforced as an Order of the Supreme Court of British Columbia

Conclusion

The Tenants' application is dismissed and the 10 Day Notice is upheld.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord.

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: April 13, 2016

Residential Tenancy Branch