



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on May 11, 2016 to cancel two notices to end tenancy for unpaid rent.

An agent for the Landlord, the building manager, the owners of the rental unit, and the Tenant appeared for the hearing and took an affirmation to provide testimony for this hearing. The Landlord’s agent confirmed receipt of the Tenant’s Application and her documentary evidence. The Landlord’s agent confirmed that they had not provided any written evidence prior to this hearing.

This dispute stems from a hearing that took place with another Arbitrator between the same parties on May 3, 2016, the file number for which is referenced on the front page of this Decision. Therefore, my Decision should be read in conjunction with the May 3, 2016 decision.

In that previous hearing, the Arbitrator documented the evidence of both parties and made a number of findings. I have reproduced some of the relevant evidence and findings made in the May 3, 2016 decision as follows:

- Rent of \$600.00 was payable for this tenancy on the last Wednesday of each month
- The Tenant stated that she paid rent of \$600.00 in cash on the last Wednesday of February 2016
- The Tenant paid \$100.00 in rent on March 13, 2016
- “On the basis of the undisputed testimony, I find that on March 13, 2016 the Tenant paid \$100.00 in rent for the period between March 13, 2016 and April 13, 2016, leaving \$500.00 still due for March of 2016”.

- “To provide clarity to the parties, if the rent for March that is due by March 30, 2016 has not been paid in full, the Landlord now has the right to serve the Tenant with another Ten Day Notice to End Tenancy on the basis of the unpaid rent from March of 2016.”

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background & Evidence

The parties agreed that this tenancy started on November 13, 2015. Although the parties could not confirm that a tenancy agreement had been signed by the Tenant and the previous landlords, it was agreed that rent was payable by the Tenant in the amount of \$600.00 per month. In the May 3, 2016 hearing, the Arbitrator determined that the rent was payable on the last Wednesday of each month.

The Landlord's agent explained that the previous decision of May 3, 2016 clearly outlined that if the rent for March 2016 remained unpaid in the amount of \$500.00 the Tenant could be served with another notice to end tenancy for unpaid rent. The Landlord's agent explained that as soon as they received the May 3, 2016 decision, they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) on May 9, 2016. The Notice dated May 9, 2016 was provided into evidence by the Tenant and shows an end of tenancy date of May 19, 2016 due to \$600.00 in rent payable on April 1, 2016. The Tenant was then served with another Notice dated May 12, 2016 due to \$500.00 that was due on March 20, 2016 and a vacancy date of May 22, 2016.

The Landlord's agent was asked to explain the dates, amounts, and reasons for issuing the Notices to the Tenant as the amounts and dates due were unclear and inconsistent with the previous Arbitrator's findings. The Landlord's agent took some time to consult with the owners of the rental unit and explained that there were some errors on both Notices. The Landlord's agent confirmed that the Notices should have detailed that the Tenant had failed to pay \$500.00 for March 2016 rent that was due on March 30, 2016 as per the previous Arbitrator's findings. The Landlord's agent confirmed that the Notices were served to the Tenant pursuant to the previous Arbitrator's instructions that the Tenant still had to pay rent for March on March 30, 2016. The Landlord's agent testified that the Tenant had also failed to pay rent for April and May 2016.

The Tenant confirmed receipt of both Notices on the same date that they were served by the Landlord. The Tenant provided extensive oral and written submissions stating that the previous Arbitrator's decision showed that when the Tenant paid rent at the end of February 2016, as the Landlord had acknowledged in the previous hearing, this was payment for March 2016 rent. The Tenant was asked whether she could clarify where this was stated in the previous Arbitrator's decision of May 3, 2016 that her payment for rent applied to the entire period of March 2016 and why she felt that she was not obligated to pay rent for March 2016. The Tenant responded by stating that this was her interpretation and understanding of the May 3, 2016 decision.

The Tenant was asked whether she had paid any rent for this tenancy after her payment was made at the end of February 2016. The Tenant testified that she applied to social services for a crisis grant who then sent the Landlords rent money in the amount of \$375.00 but the Landlord refused to accept it.

The building manager testified that she received a call from social services who asked whether they could send the Landlord a cheque for \$375.00 for the rent for March 2016. However, the building manager explained to social services that the Tenant was in rental arrears for \$500.00 and that \$375.00 would not cover the rent. The building manager testified that social services informed her that they would consider this and get back to her. However, no one did. Therefore, they went ahead and served the Tenant the Notices after the May 3, 2016 decision was issued to them.

The Landlord's agent testified that on May 24, 2016, social services sent a cheque in of \$750.00 but they refused it because it was not enough to pay for the rental arrears that had by this time accumulated to unpaid rent for March, April and May 2016 and that they did not want to re-instate the tenancy by accepting this money.

The Tenant responded stating that the Landlords had bombarded her with several Notices and they were confusing. When the Tenant was asked how she was intending to pay the difference in the amounts she alleged were provided to the Landlords by social services, the Tenant acknowledged that she now had the money and could pay the rental arrears. The Tenant acknowledged that she was only in rental arrears for April 2016 in the amount of \$125.00 and \$225.00 for May 2016. The Tenant testified that the Landlord is now refusing to accept rent.

Analysis

Firstly, I find the Tenant made the Application to dispute both Notices she provided into evidence within the five day time limit provided by Section 46(4) (b) of the Act.

Section 26 of the Act requires a tenant to pay rent whether or not the landlord complies with the Act unless the tenant has a right to deduct or withhold rent. In this case, while I accept the Landlord served the Tenant with two Notices dated May 9 and May 12, 2016 which both displayed inaccurate amounts of rent due and when they were due for payment, I find that an error in the amount of rent due or when it was due for payment on a Notice does not necessarily invalidate it. Furthermore, Policy Guideline 11 to the Act on the amendment and withdrawal of noticed to end tenancy states that as a general rule the giving of a second notice to end tenancy does not operate as a waiver to a notice already given.

In making my findings in this case, I must turn to the decision made by the previous Arbitrator on May 3, 2016 that prompted the Landlord to issue the Tenant with the two Notices in dispute. I find that the previous Arbitrator made it very clear that if the rent for March 2016 which is due on March 30, 2016 was not paid by the Tenant then the Landlord was a liberty to issue the Tenant with another notice to end tenancy. This was clearly set out in the previous decision that found that the Notice served to the Tenant dated March 14, 2016 for this same reason was premature.

Therefore, I am only able to conclude that when the Landlord issued the Tenant with the Notice on May 9 and May 12, 2016, the Tenant had an obligation to pay \$500.00 for the March 2016 rent. I am unable to change or overturn another Arbitrator's findings made in a previous hearing and therefore, I do not accept the Tenant's interpretation of that Arbitrator's findings that she did not have to pay rent for March 2016 and that this was paid in February 2016. I find this is contrary to what the previous Arbitrator had clearly laid out in the May 3, 2016 decision.

I find the Tenant has failed to provide sufficient evidence of the actual payment attempts that were made by either the Tenant or social services and that these alleged payments amounted to the full rent of \$600.00 that was payable for the months of March, April and May 2016. The Tenant bears the responsibility to pay rent to the landlord under a tenancy agreement and pursuant to the Act. If a tenant relies on the third party to make payments for them, that tenant must ensure that the payment is made to the landlord and if this results in a shortfall, the tenant must make up the shortfall or provide sufficient evidence that the landlord was offered full rent and the landlord failed to accept it. Furthermore, once a Notice is issued to a tenant, when the time period to dispute the Notice or make full rent payment expires, there is no requirement on the landlord to accept payment as this could be construed as re-instating the tenancy.

Based on the foregoing evidence before me, I am only able to conclude that the Tenant failed to pay the Landlord \$500.00 within the five day time period that the Notices were

served to the Tenant. I also find that since March 2016, the Tenant has failed to satisfy me that she has continued to pay full rent for the months following March 2016. Therefore, I find that the Tenant has failed to establish that the Notice should be cancelled and the Tenant's Application in this respect is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notices has now passed and the Tenant is in rental arrears, the Landlord is entitled to a two day order of Possession. If the Tenant fails to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenant.

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: June 14, 2016

Residential Tenancy Branch