



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR MNR FF

Tenant: MT MNR MNDC OPT LAT RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application was received at the Residential Tenancy Branch on June 9, 2016 (the “Tenant’s Application”).

The Tenant applied for the following relief pursuant to the *Act*: an order granting more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2016 (the “10 Day Notice”); a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss; an order of possession of the rental unit; an order authorizing the Tenant to change the locks to the rental unit; and an order allowing the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

The Landlord’s Application was received at the Residential Tenancy Branch on June 13, 2016 (the “Landlord’s Application”).

The Landlord applied for the following relief pursuant to the *Act*: an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities; and an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by K.L. Both parties provided their solemn affirmation.

The parties acknowledged receipt of the other party’s evidence. No issues were raised with respect to the evidence.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Multiple orders are being sought by the parties. During the hearing, the parties were advised of Rule 2.3 of the Residential Tenancy Branch Rules of Procedure. This provision permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the parties' applications was whether or not the tenancy will continue. The remainder of the relief being sought by the parties is not directly related to whether or not the tenancy will continue.

Accordingly, I find it appropriate to exercise my discretion to dismiss the claims not directly related to whether or not the tenancy ends. The parties are granted leave to reapply for the remainder of the relief sought at a later date.

In addition, after the hearing I noted the street name in the Disputed Address field differs in the parties' Applications. The number of the rental unit, the street number, and the city are identical.

Section 64 of the *Act* permits an arbitrator to amend an application for dispute resolution. As the 10 Day Notice issued by the Landlord is at the centre of the matter being considered, and the preponderance of evidence submitted by the parties suggests the Disputed Address field as completed by the Landlord is correct, I amend the Tenant's Application so the Disputed Address conforms with the address provided in the Landlord's Application.

Issues to be Decided

1. Is the Tenant entitled to more time to make an application to cancel the 10 Day Notice?
2. Is the Landlord entitled to an order of possession based on the 10 Day Notice?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed there is no written tenancy agreement between them. However, the parties confirmed the tenancy began in or about 2005 and has continued on a month-to-month basis. Rent in the amount of \$750.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Tenant's Claims

The Tenant is seeking more time to make an application to cancel the 10 Day Notice.

The Tenant testified that she provided her June 2016 rent payment, a cheque, to two friends, L. and D. She stated the payment was made to the Landlord on June 13, 2016, and provided a copy of a receipt from the Landlord confirming receipt of a cheque on that date. The cheque included in the Tenant's evidence is dated July 1, 2016.

The Tenant advised the payment was not received by the Landlord because of misunderstandings and miscommunications.

In addition, the Tenant stated her belief that she is being harassed, violated and intimidated. She indicated she suffered a workplace injury, and recently had a death in the family. The Tenant also testified her mailbox had been broken open, and made a vague suggestion that her identity had been compromised.

The Landlord's Claims

The Landlord seeks an order of possession based on the 10 Day Notice.

The Landlord provided oral testimony that rent for the month of June 2016 was not paid when due on June 1, 2016. As a result, the Landlord issued the 10 Day Notice, which was served on the Tenant by leaving a copy attached to the Tenant's door on June 2, 2016. The effective date of the 10 Day notice was June 12, 2016.

The Landlord acknowledged the rent payment for the month of July 2016 has been received. A hand-written receipt, dated June 29, 2016, confirming receipt of the payment and indicating the payment was for "use and occupancy only", and a copy of the cheque, were provided with both parties' documentary evidence.

The Landlord also referred me to four emails to the Tenant dated June 1, 2 and 6, 2016, copies of which were included with the Landlord's documentary evidence. Each of the emails advised the Tenant that rent was payable to the Landlord.

In reply, the Tenant acknowledged receipt of the 10 Day Notice on June 2, 2016. She stated her belief that rent had been paid.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

The Tenant's Claims

The Tenant requested more time to make an application to dispute the 10 Day Notice.

Section 66 of the *Act* permits an arbitrator to extend a time limit established by the *Act* in "exceptional circumstances". However, I find there was insufficient evidence before me to conclude there were any exceptional circumstances that justify an extension to the time limit to dispute the 10 Day Notice.

Accordingly, the Tenant's Application for more time to dispute the 10 Day Notice is dismissed.

The Landlord's Claims

As acknowledged by the Tenant, I find the Tenant was duly served with the 10 Day Notice on June 2, 2016.

Pursuant to section 46 of the *Act*, a tenant who receives a notice to end tenancy has five days to either pay rent or file an application for dispute resolution. When a tenant receives a notice to end tenancy under this provision and does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice. The notice must comply with section 52 of the *Act*.

On review of the 10 Day Notice submitted with the parties' evidence, I find it complies with section 52 of the *Act*.

Further, I find the Tenant did not pay rent or file an application for dispute resolution in the applicable time period. Accordingly, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

As the Landlord has been successful, I grant the Landlord recovery of the filing fee, which may be deducted from the security deposit.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: July 14, 2016

Residential Tenancy Branch