



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL PROP. MNGT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR MNDC OLC ERP PSF FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 5, 2016 and amended on August 15, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 9, 2016 (the "10 Day Notice");
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;
- an order that the Landlord provide services or facilities required by law; and
- an order granting the Tenant recovery of the filing fee.

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

Both parties acknowledged receipt of the other parties' evidence. No issues were raised with respect to service or receipt of evidence.

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

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 and Procedural Matters

A number of orders are being sought by the Tenant, as summarized above. However, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's Application is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the 10 Day Notice and to recover the filing fee, with leave to reapply at a later date.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Although a written tenancy agreement was not submitted into evidence by either party, the parties confirmed the terms of the tenancy. Both agreed that a fixed-term tenancy was in place from June 1, 2014 to May 31, 2016; thereafter, the tenancy continued on a month-to-month basis. Currently, rent in the amount of \$771.00 per month is due on the first day of each month. At the beginning of the tenancy, the Tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00.

On behalf of the Landlord, J.W. testified that rent was not paid in full for the month of August 2016. According to J.W., the amount outstanding is \$421.00, which consists of outstanding rent of \$396.00 and a \$25.00 service charge. J.W. confirmed the written tenancy agreement contains a clause permitting recovery of service charges, and the Tenant did not disagree. Accordingly, the Landlord issued the 10 Day Notice on August 9, 2016. The Amendment to an Application for Dispute Resolution filed by the Tenant confirms receipt of the 10 Day Notice on that date.

The Tenant acknowledged rent was not paid as alleged by the Landlord. According to the Tenant, she has not paid rent because she has reached a "breaking point" with respect to bed bugs and cockroaches in her rental unit and throughout the building. The Tenant also expressed concern about the state of the grounds, noting that bushes and trees were growing up against the building.

In reply, the Landlord advised that there have been previous treatments to address pest issues. Further, she indicated that a further treatment of the Tenant's rental unit was attempted at the end of August 2016, but that the pest control company was not prepared to proceed because the Tenant's dogs were in the rental unit. Follow up treatments are expected. The Landlord has also made arrangements to have some gardening and landscaping completed.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due. On receipt of a notice, a tenant has five days to either pay the outstanding rent or file an application to dispute the notice at the Residential Tenancy Branch. Failure to do either of these results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice to end tenancy.

In this case, the Tenant filed the Application in the appropriate timeframe. However, as acknowledged by the Tenant, I find that rent was due on August 1, 2016, and that rent and service charges totalling \$421.00 remain outstanding. Further, I find there is insufficient evidence to conclude the Tenant had a right under the *Act* to deduct all or a portion of her rent.

In light of the above, the Tenant's Application is dismissed and the 10 Day Notice is upheld.

Section 55 of the *Act* requires that I grant an order of possession to a landlord when a tenant's application for dispute resolution is dismissed and the notice complies with section 52 of the *Act*. I have reviewed the 10 Day Notice and find it to be in accordance with section 52 of the *Act*.

As I have dismissed the Tenant's Application and have determined the 10 Day Notice complies with section 52 of the *Act*, I grant the Landlord an order of possession. The order of possession will be effective two days after service on the Tenant.

As the Tenant has not been successful, I decline to award the Tenant recovery of the filing fee.

Conclusion

Subject to the exercise of my discretion pursuant to Rule of Procedure 2.3, the Tenant's Application is dismissed and the 10 Day Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service 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.

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: September 29, 2016

Residential Tenancy Branch

