



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF (Landlord's Application)
 CNR, CNC (Tenant's Application)

Introduction

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 7, 2016 and by the Landlord on November 8, 2016.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, as well as a request to recover the filing fee from the Tenant. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The original hearing was scheduled for November 30, 2016. Both parties appeared for that hearing which was conducted by a different Arbitrator. However, at the start of that hearing, the Tenant experienced a medical emergency and the hearing was adjourned to reconvene at the earliest time possible. That Arbitrator made an Interim Decision dated November 30, 2016 detailing the grounds for adjourning the November 30, 2016 hearing. As that Arbitrator did not hear any evidence in relation to this dispute and was therefore not seized of the matter, the earliest date possible for the reconvened hearing was set to be heard by me in this hearing.

The Landlord, the Tenant, and an agent for the Tenant who the Tenant claimed was a co-tenant in this tenancy and her agent for this hearing, appeared for this reconvened hearing and provided affirmed testimony. The Tenant's agent is referred to as "KD" in this Decision and KD's full name appears on the front page of this Decision. The parties confirmed receipt of each other's Application and evidence which were served prior to the first hearing and pursuant to the *Residential Tenancy Act* (the "Act").

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to cancel the notices to end tenancy?
- Is the Landlord entitled to unpaid rent for the months of October, November, and December 2016?

Background and Evidence

The parties agreed that this tenancy for the rental unit started on September 1, 2016. The Tenant paid a \$300.00 security deposit and rent was established in the amount of \$600.00 payable on the first day of each month. The Tenant disputed the existence of a written signed tenancy agreement but agreed that the rent for the tenancy was \$600.00 per month.

The Landlord testified that he served the Tenant with a 1 Month Notice on September 27, 2016 by posting it to the Tenant's door. The 1 Month Notice was provided into evidence and shows a vacancy date of October 31, 2016. The Landlord testified that he also served the Tenant with the 10 Day Notice on October 2, 2016 by posting it to the door. The 10 Day Notice was provided into evidence and shows a vacancy date of October 12, 2016 due to \$600.00 that was payable on October 1, 2016. The Tenant confirmed receipt of the 1 Month Notice and the 10 Day Notice on the dates they were issued and applied to dispute them both on October 7, 2016.

The Landlord testified that the Tenant failed to pay rent of \$600.00 on October 1, 2016 and this was the reason why she was served with the 10 Day Notice on October 2, 2016. The Landlord testified that the Tenant has also failed to pay rent for November and December 2016 and she is in rental arrears of \$1,800.00. The Landlord claims this amount from the Tenant and stated that he had applied to recover rent for November and December 2016 in the details section of his Application. The Landlord also requested to keep the Tenant's security deposit.

The Tenant confirmed that she had not paid rent to the Landlord for October, November and December 2016. The Tenant stated that the Landlord has sexually harassed her, made threats to her life, and made false allegations that she is under surveillance by the police for drug dealing.

The Tenant testified that the Landlord failed to give her a mail box key at the start of the tenancy. As a result, the Tenant did not get her rent cheque which was being sent to her

in the mail by a third party government agency. The Tenant testified that she did not pay rent for November and December 2016 because the Landlord has failed to complete an 'intent to rent' form and phoned the government agency who pays her rent informing them that the Tenant is not a tenant of his. Therefore, her rent cheques have since been stopped.

The Tenant continued to testify that the Landlord has failed to complete repairs to the rental unit, namely: a broken refrigerator; a broken window; and damage caused as a result of a flood event. The Tenant's agent stated that the Tenant had to pay out to complete these repairs, the costs of which the Tenant then withheld from rent.

The Landlord disputed the Tenant's oral testimony and stated that the damages referred to by the Tenant were caused by the Tenant including damage to the mail box which the Tenant was responsible for. The Landlord stated that he had contacted the government agency to inform them that KD was not a tenant in this tenancy and was not a party to the written tenancy agreement.

Analysis

In this dispute, I first turn to the 10 Day Notice to make findings on this matter first. I accept the Tenant received the 10 Day Notice on her door on October 2, 2016 and made the Application to dispute it on October 7, 2016. Therefore, I find the Tenant filed to dispute the 10 Day Notice within the five day time period provided by Section 46(4) (b) of the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** the landlord complies with the Act, unless the Tenant has authority under the Act to withhold or deduct payment.

In this case, the Tenant asserted that she did not pay rent because the Landlord did not complete repairs to the rental unit. In this respect, a tenant must not withhold or deduct rent for a landlord failing to complete repairs to a rental unit; a tenant has a legal obligation to still pay rent and use other remedies under the Act to address repairs through dispute resolution.

Furthermore, the Tenant failed to provide sufficient evidence that the repairs that she testified to were of an emergency nature and that the Landlord had been informed of emergency repairs or provided with invoice evidence that was equivalent or reflective of 3 months' rent. In addition, a dispute in an arrangement between a tenant and a party who pays the tenant's rent rests between that party and the Tenant. The Tenant still has

a statutory obligation to ensure that they meet the terms of rent payment every month to the Landlord, even if there is a breakdown or interference in an arrangement a tenant has with a third party to pay rent.

I find there is insufficient evidence before me that the Tenant had authority under the Act to pay rent and the Tenant still had an obligation to pay rent whether or not the Landlord complied with the Act. Therefore, I decline to cancel the 10 Day Notice and grant the Landlord's request for an Order of Possession. As the tenancy has now ended under the 10 Day Notice, I declined to make any legal findings on the 1 Month Notice as this is now moot.

As the Tenant continues to occupy the rental unit and is currently in rental arrears, the Landlord is granted an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to voluntarily vacate the rental unit.

In relation to the Landlord's monetary claim, the Landlord only claimed \$1,200.00 in unpaid rent as the amount disclosed on the Application but did request November and December 2016 rent in the details section of the Application. Section 64(3) (c) of the Act allows an Application to be amended. In addition, Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

"In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

[Reproduced as written]

Based on the foregoing, I amended the Landlord's Application to consider his monetary claim for the amount of \$1,800.00 for unpaid rent. I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent for October, November and December 2016 in the outstanding balance of \$1,800.00. Therefore, this amount is awarded to the Landlord.

Since the Landlord has been successful in this Application, I also grant the recovery of the \$100.00 filing fee the Landlord paid to file the Application. Therefore, the total amount awarded to the Landlord is \$1,900.00

As the Landlord already holds \$300.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to

Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$1,600.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment.

Conclusion

The Tenant has failed to pay rent in this tenancy. Therefore, the Tenant's Application is dismissed without leave to re-apply. The Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord is also awarded unpaid rent and the filing fee. The Landlord may achieve this relief by keeping the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$1,600.00.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by 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 Act.

Dated: December 15, 2016

Residential Tenancy Branch