



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that he served the tenant with his notice of hearing package, but cannot recall how or when. The tenant confirmed receiving the landlord's notice of hearing package by mail. The tenant stated that the landlord was served with her notice of hearing package via Canada Post Registered Mail on November 7, 2016. The landlord confirmed receipt of the tenant's notice of hearing package in this manner. The

landlord did not submit any documentary evidence. The tenant stated that her first documentary evidence package was served with the notice of hearing package on November 7, 2016 via Canada Post Registered Mail. The landlord confirmed receipt of this package. The tenant stated that her second documentary evidence package was served to the landlord in person on November 8, 2016. The landlord confirmed receipt of this package. The tenant stated that her third documentary evidence package was served to the landlord in person on November 17, 2016. The landlord confirmed receipt of this package. The tenant stated that her fourth documentary evidence package was served to the landlord via Canada Post Registered Mail on December 7, 2016. The landlord disputed that he never received this package. The tenant has submitted in support of this claim a copy of the Canada Post Customer Receipt Tracking number label and receipt. A review of the Canada Post website online search shows that the package was accepted by Canada Post on December 7, 2016, out for an attempted delivery on December 8, 2016 where a notice card was left for pick up of the package. On December 12, 2016 a final attempt at service was made where a final notice card was left for the landlord to pick up the package or that it would be returned to the sender.

I accept the evidence provided by both parties and find that both the landlord and the tenant have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Although the landlord disputes that he did not receive the fourth package of documentary evidence, the Canada Post Website clearly shows that two attempted deliveries were made where a notice card was left for the recipient to pick up the package. As such, I find that the landlord was sufficiently served as per section 90 of the Act and is deemed served 5 days later on December 12, 2016.

Preliminary Issue

At the outset, the tenant clarified that the request for a monetary order for money owed or compensation for damage or loss was unrelated to the primary issue of unpaid rent for both parties.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss. As this section of the tenant's application is unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss this section of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 5, 2016 on a fixed term tenancy ending on September 30, 2017 and then thereafter on a month-to-month basis as shown by the tenant's submitted copy of the signed tenancy agreement. The monthly rent is \$1,300.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid on October 4, 2016.

Both parties agreed that the landlord served the tenant with a 10 Day Notice dated November 2, 2016. Both parties confirmed that the landlord had posted this 10 Day Notice to the rental unit door on November 2, 2016. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,300.00 that was due on November 1, 2016. The 10 Day Notice provides an effective end of tenancy date of 12/15/2016. The landlord clarified that the end date was an error. The tenant could not clarify it, but stated that she assumed it meant that the landlord wanted the end date to be November 15, 2016. The landlord confirmed this.

The landlord stated that the tenant failed to pay rent for November 2016 and December of 2016 for \$1,300.00 per month. The tenant confirmed this in her undisputed affirmed testimony that she has not paid any rent for November or December of 2016. The tenant stated that she has had financial issues from her bank preventing her from paying the rent. The landlord disputed this stating that the tenant has failed to provide any evidence to support this. The tenant relies upon an email that she received from her bank, but is not able to provide any other details.

I note that a review of the email fails to disclose how she is unable to access funds from her account. The email states that her password was changed and for her to contact

the bank personnel immediately. No other details of a frozen bank account were provided by the tenant.

Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide any evidence that she was entitled to withhold rent or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for November and December of 2016. The tenant admits that she did not pay November and December's rent.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued November 2, 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on November 15, 2016, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that she has not paid November or December's rent. I find that the landlord is entitled to this amount of \$2,600.00 for unpaid rent.

The landlord having been successful in his application is entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$650.00 security deposit in partial satisfaction of the claim. No interest is payable during this period.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,050.00.

The order of possession must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The monetary order must be served upon the tenant. Should the tenant fail to comply with that order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: December 21, 2016

Residential Tenancy Branch