



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR

Introduction

This hearing was reconvened in response to an application by the Tenant and as a Review Hearing on an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on December 6, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 46.

The Landlord applied on December 23, 2016 for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant submitted as evidence a monetary order worksheet that appears to be claiming damages from the Landlord. The Tenant states that an application has been made claiming damages from the Landlord. It is noted that no claim has been made in the original application for damages or compensation and no amendment to the Tenant’s current application has been provided by the Tenant.

Rule 2.2 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure (the “Rules”) provides that claims are limited to what is stated in the application. Rule 2.3 of

the Rules provides that claims made in an application must be related to each other. The Tenant did not provide any evidence of any amended application for this hearing and the Tenant's claim for damages arising during the tenancy is not contained in the original application. Further even if the Tenant had made an amendment I would not have allowed the amendment as the claim for damages during the tenancy is not related to the claim in relation to the notice to end tenancy for unpaid rent. I therefore decline to consider an amendment or a claim for damages by the Tenant. I note that if the Tenant has not already made an application to claim damages arising during the tenancy the Tenant remains at liberty to do so.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The following are undisputed facts: The tenancy started on August 1, 2016. Rent of \$1,190.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$585.00 as a security deposit and \$292.50 as a pet deposit. The Tenant failed to pay rent for December 2016 and on December 3, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The Tenant states that rent could not be paid due to the failure of the Landlord to provide running water during the tenancy. The Tenant states that an application has been made claiming damages in relation to the Landlord's failure to make repairs.

The Tenant agrees that no rent has been paid for January and February 2017. The Landlord requests an order of possession for as soon as possible. The Tenant states that they are willing to move out of the unit on April 1, 2017 as they have not found any other place sooner. The Landlord is not agreeable to the Tenant's continued stay at the unit as no rents have been paid. The Tenant states that the matter has been taken to

the Supreme Court and that the Supreme Court has indicated that nothing could be done until after this hearing.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent.

Section 26 of the Act provides 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. While the Tenant may have made an application in relation to claiming damages from the Landlord's failure to provide, inter alia, running water, the Tenant provided no order issued by the RTB allowing the Tenant to make any deductions from the rent payable under the tenancy agreement. As the Tenant's reason for withholding the rent is not allowed under the Act, I find that rents were not paid for December 2016, that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Tenant's application is dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the valid Notice and considering that required form and content is contained on the Notice I find that the Landlords are entitled to an order of possession. Based on undisputed evidence of unpaid rent the Landlord is also entitled to **\$3,570.00** in unpaid rent for December 2016 and January and February 2017. Deducting the combined security and pet deposit plus zero interest of **\$877.50** from the entitlement leaves **\$2,692.50** owed by the Tenants to the Landlord. I make both orders in the names of the Parties indicated in the Landlord's application.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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.

I order that the Landlord retain the **deposit** and interest of \$877.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,692.50**. If necessary, this order may be filed in the Small Claims 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: February 15, 2017

Residential Tenancy Branch