



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to a Tenant's Application for Dispute Resolution (the "Application") made on January 5, 2017 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice").

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by registered mail. The only evidence provided by the Tenant prior to the hearing was a copy of the 10 Day Notice. The Tenant confirmed receipt of the Landlord's three pages of documentary evidence.

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 issues to be decided.

At the start of the hearing the parties confirmed that the dispute address was the upper portion of the rental property which was under a separate tenancy to the downstairs renter. As a result, the parties consented to the dispute address being amended on the Application to reflect the upper portion to which this dispute related to.

Issue(s) to be Decided

- Has the Tenant established that the 10 Day Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background & Evidence

The parties agreed that this oral tenancy for the upper portion of the rental property started on October 31, 2016. The Tenant was renting the rental unit with her son at a

monthly rent of \$650.00 which was payable on the first day of each month. No security deposit was requested or paid for this tenancy. The parties confirmed the Tenant paid rent of \$650.00 for the months of November and December 2016.

The Landlord testified that the Tenant paid rent in advance on December 22, 2016 for January 2017 in the amount of \$525.00. This left a balance of \$125.00 outstanding for January 2017 which was not paid by January 1, 2017.

As a result, the Tenant was personally served with the 10 Day Notice on January 2, 2016. The 10 Day Notice was provided into evidence by the Tenant and shows a vacancy date of January 12, 2017 due to \$305.00 payable on January 1, 2017. The Landlord stated that the amount of rent he detailed on the 10 Day Notice also included unpaid utilities, although this was not documented in the unpaid utilities box on the 10 Day Notice. The Landlord testified the Tenant has also failed to pay February 2017 rent.

The Tenant confirmed that she had received the 10 Day Notice on January 2, 2017 and had applied to dispute it on January 5, 2017. The Tenant confirmed that she had paid to the Landlord \$525.00 for January 2017 rent. When the Tenant was asked why she was short of \$125.00, the Tenant stated that she did not have the money.

When the Tenant was asked why she had not paid for February 2017 rent, the Tenant explained that the Landlord had failed to deal with: black mold; exposed wiring, repairs to appliances and the toilet; and major leaks in the rental unit.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the "Act") requires a tenant to pay rent **whether or not** the landlord complies with the Act unless the tenant has a right to deduct or withhold rent.

In this case, I accept the undisputed evidence the Tenant was personally served with the 10 Day Notice, which complied with the Act, on January 2, 2017. I also accept that the Tenant made the Application to dispute the 10 Day Notice within the five day time limit provided by the Act. However, an Application made within the correct time limit of the Act does not mean that it should be cancelled. In this case, the Tenant must prove that she had authority to withhold or deduct rent.

Having considered the Tenant's evidence as to why she did not pay rent, I find the Tenant has not disclosed any authority under the Act to not pay rent. If a tenant does not have the money to pay rent, this does not mean the obligation and requirement to

pay rent under the Act can be avoided. Rather, the 10 Day Notice explains to the Tenant that they must pay rent or if they cannot, they must move out by the vacancy date of the 10 Day Notice, which in this case was January 12, 2017. However, the Tenant continues to occupy the rental unit without paying the rental arrears owed.

In addition, I accept the undisputed testimony that the Tenant has failed to pay rent for February 2017. In this respect, the Tenant disclosed insufficient evidence that she had authority to withhold rent in this tenancy for the alleged failure of the Landlord to complete repairs to the rental unit. Furthermore, an error on the amount of **rent** outstanding on the 10 Day Notice of \$125.00 rather than \$305.00 does not invalidate the 10 Day Notice. Therefore, I find that the Tenant has failed to establish the 10 Day Notice should be cancelled and the Tenant's Application is dismissed.

Section 55(1) of the Act provides that if a tenant makes an Application to dispute a notice to end tenancy, the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant's Application is dismissed. I find the form and content of the 10 Day Notice complied with the requirements of Section 52 of the Act. As the vacancy date of the 10 Day Notice has now passed and the Tenant is in rental arrears while continuing to occupy the rental unit, the Landlord is entitled to a two day order of Possession. If the Tenant fails to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this Decision for service on the Tenant.

Conclusion

The Tenant has failed to pay rent in this tenancy. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenant. 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: February 06, 2017

Residential Tenancy Branch