



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR FF MT CNR DRI LRE OPT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (‘the 10 Day Notice’) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an Order of Possession of the rental unit pursuant to section 54.

This hearing was originally set to deal with the landlord’s application only, but it came to my attention during the hearing that the same parties had a second matter set for a hearing on March 15, 2017 to deal with the tenant’s cross application pertaining to this same 10 Day Notice and tenancy. Both parties appeared, and with their consent, both applications were dealt with today. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

Preliminary Issue—Tenant’s Application for an Extension of Time to File their Application for Dispute Resolution

The tenant filed her application for dispute on February 10, 2017, although the landlord testified during the hearing that the 10 Day Notice was personally served on December 2, 2016 to another adult residing at the rental address. The tenant has the right to dispute the Notice within 5 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 5 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The landlord testified that the 10 Day Notice was personally served on December 2, 2016 to another adult who resides with the tenant at the rental address. The 10 Day Notice is therefore deemed to have been received on December 2, 2016, and the tenant had filed for dispute resolution on February 10, 2017, seventy days later.

Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant, in her application, stated that she was unaware of the 10 Day Notice issued to her as she was “stranded in the lower mainland” due to the bad weather, and she had no access to a phone as it was stolen.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has not met the burden of proof to justify that there is an exceptional reason for the late filing of her application. Although I accept the tenant’s testimony that she was unable to return home due to the bad weather, I find that she did not provide any exceptional or compelling reasons for why she did not, or could not, maintain contact with her other roommates residing at her home or the landlord, other than the fact that she had her phone stolen. Accordingly, I find the tenant’s reason for her late application does not meet the definition of “exceptional” as per RTB Guideline #36, and under these circumstances, I am not allowing the tenant’s application for more time to make her application.

Issue(s) to be Decided

Should the landlord’s 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover his filing fee for this application pursuant to section 72 of the *Act*?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70 of the *Act*?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43 of the *Act*?

Is the tenant entitled to an Order of Possession of the rental unit pursuant to section 54 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in November 2015. The landlord testified that rent was set at \$375.00 a month plus an additional \$75.00 for utilities, payable on the first of each month. The landlord did not collect a security deposit for this tenancy, and there is no written tenancy agreement. The tenant testified that rent was set at \$375.00 plus an additional \$25.00 for electricity, with gas included in the rental amount.

The landlord issued the 10 Day Notice on December 2, 2016, indicating an effective move-out date of December 12, 2016. The landlord testified that the 10 Day Notice was issued as the tenant had not paid rent since May 2016. The landlord is seeking a Monetary Order for unpaid rent and utilities in the amount of \$450.00 per month for May 2016 through February 2017, for a total amount of \$4,500.00.

The landlord testified that he took over the management of the property when his business partner's health had deteriorated, and that the rent was collected through another tenant, J, who lived on the property. The landlord testified that to his knowledge the last rent payment was made in the amount of \$375.00 in February 2016, but that the tenant, J, looked after the management of the tenancy and rent, and that J was responsible for ensuring the monies were deposited into the landlord's account.

The landlord testified that the utilities were originally in the tenant's name, until July 2015, when the landlord had changed the billing to his name, and hence why he collected \$375.00 plus \$75.00 for gas and electricity. Neither party had submitted any utility statements as part of their application.

The tenant did not dispute that some rent payments have not been paid, but was adamant that rent was \$375.00 plus \$25.00 for electricity. The tenant did not dispute the fact that the landlord took over the billing for the electricity in July, but she disputes the landlord's testimony that gas was not included in the rent. The tenant testified that rent was paid to the other tenant, J, who was responsible for depositing the rent money into the landlord's account. She testified that when she had contacted the landlord to pay her July 2016 rent, which was late as her dog was ill, she was directed to pay the rent to J. The tenant did not submit any receipts for her rent payments, but she testified that June, July, and August 2016 rent were paid, and that she received social assistance in the amount of \$375.00 for the purposes of paying rent. The tenant said she paid her rent in cash, and J may have spent the money. The tenant does not dispute the fact that she did not pay the November rent as she was in the lower mainland with health issues.

The tenant also testified that there were numerous problems with the tenancy and rental unit, including a period of time when she was displaced from her room at the rental home from November 2015 through to March 2016 when another tenant had destroyed the floor boards, and left the rental unit in extremely bad condition. The tenant also believed that the landlord had thrown her belongings in the garbage without her permission to do so.

The landlord disputes the fact that the tenant's belongings were thrown away by him. The landlord does not dispute the fact that another tenant had caused significant damage to the rental home, but the landlord stated the tenant was given an alternate room to stay in at the residence. The landlord is seeking an Order of Possession as well as a Monetary Order as the tenant had not paid the outstanding rent owed to him.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice 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.

The tenant failed to pay the full rent due on December 7, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant failed to make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 12, 2016, the effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by December 12, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As to the application for a monetary order, the tenant did not dispute that she owed rent for the months of September 2016 through to February 2017. The tenant testified that rent was \$375.00 plus \$25.00, while the landlord testified that rent was \$375.00 plus \$75.00. As it is the landlord's application for a monetary order, the onus falls on him to provide sufficient evidence to support his claim. The landlord did not submit any receipts, statements, a written tenancy agreement, or any written agreements to support the fact that rent was \$450.00 and not \$400.00 as per the tenant's testimony. Accordingly I accept the tenant's testimony that rent was set at \$400.00 total a month.

Both parties did agree that rent was paid through a third party, and the tenant stated that rent was paid in cash for the months of June 2016 through to August 2016. Based on the testimony and evidence provided for this hearing I find that the tenant did not provide sufficient evidence to support her claim that rent was paid for the months of June and July 2016. The tenant did not provide any reports or receipts, nor was there any witness testimony. On this basis, I find that the tenant did not pay rent, nor did she have the grounds to withhold, deduct, or reduce the rent payable for the months of May 2016 through to February 2017.

Accordingly I am allowing the landlord a Monetary Order to recover unpaid rent in the amount of \$400.00 for the months of May 2016 through to February 2017 for a total of \$4,000.00. As the landlord was successful in his application, I am allowing him to recover the \$100.00 filing fee from the tenant.

The remainder of the tenant's application is dismissed as the tenancy has effectively come to an end on December 12, 2016.

Conclusion

The tenant's entire application is dismissed.

The landlord's application is allowed. I find that the landlord's 10 day Notice is valid and effective as of December 12, 2016.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$4,100.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, and also allows the landlord to recover his filing fee for this application.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: March 6, 2017

Residential Tenancy Branch