



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RR

Introduction

This hearing was scheduled to consider the tenant's application pursuant to the *Residential Tenancy Act* (the "Act").

The tenant seeks:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord SC primarily spoke for both landlords (the "landlord").

As both parties attended, I confirmed that there were no issues with service of either the 10 Day Notice or the tenant's application for dispute resolution. I find that the 10 Day Notice and tenant's application were served in accordance with sections 88 and 89 of the *Act*.

The tenant testified that she sent her evidentiary materials to the landlord by registered mail and provided a Canada Post tracking number as evidence of service. The landlord testified that they did not receive the tenant's evidentiary materials. As the tenant's evidence consists primarily of written arguments and photographs of the rental unit I do not find their inclusion to be unreasonably prejudicial. Nevertheless, I advised the parties that pursuant to Rule 3.17 of the Rules of Procedure I would only consider those pieces of evidence that the landlord could confirm having reviewed prior to the hearing.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Should the landlords be ordered to make emergency repairs to the rental unit?

Should the tenant be authorized to reduce rent for repairs?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in June, 2016. The rental unit is a basement suite in a detached home. The rent is \$775.00 payable on the first of each month. The tenant is also responsible to pay for a portion of the utilities.

The landlord testified that the tenant owed \$775.00 for rent and \$36.52 for utilities on February 19, 2017 when the 10 Day Notice was issued. The landlord said that the tenant did not make any payment for rent or utilities and the arrear for this tenancy is \$2,328.41 as at March 22, 2017 the date of the hearing.

The tenant testified that she has not made any rent or utility payments since February, 2017. The tenant said that she felt she should not have to pay as the landlord has failed to make requested repairs to the rental unit. The tenant said that the rental unit has a number of deficiencies including rat infestation, sinking floors, mold and plumbing issues. The tenant testified that she has told the landlords about the issues on numerous occasions and the landlords have failed to take appropriate action. She said that the third party contractors hired by the landlords performed cursory inspections without addressing the problems.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord gave undisputed sworn testimony that there is an arrear of \$2,328.41 for this tenancy.

Pursuant to section 26 of the *Act*, the tenant must pay rent when it is due whether or not the landlord complies with the *Act*, regulations or the tenancy agreement. The tenant does not have the ability to withhold rent simply because she feels the rental unit requires maintenance.

Section 33 of the *Act* gives a list of repairs that are considered emergency repairs. Those include repairs that are necessary for the health and safety of anyone or the preservation of the rental property. The *Act* provides that in specific circumstances the tenant may have emergency repairs made but the tenant does not have the ability to simply deduct rent because repairs are not made by the landlord.

I find that the tenant had no basis for withholding the rent and utility payments owed under the tenancy agreement. I find that the tenant was obligated to pay the monthly rent in the full amount of \$775.00. I accept the evidence before me that the tenant failed to pay the full rent due. Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to dispute the 10 Day Notice, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed, I issue a 2 day Order of Possession.

As I have found this tenancy to have ended I find it unnecessary to make a finding regarding the tenant's application for emergency repairs or rent reduction.

Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 22, 2017

Residential Tenancy Branch