



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR
Tenant: MT, CNR, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and a rent reduction. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

I note prior to the hearing the landlord submitted an Amendment to an Application for Dispute Resolution adding a claim for a monetary order in the amount of \$1,570.00. I accept the landlord's amendment.

I also note that the tenant submitted she received the landlord's 10 Day Notice to End Tenancy on April 9, 2017 and that she applied to dispute the Notice on April 13, 2017. The tenant was allowed 5 days after receipt of the Notice to submit her Application for Dispute Resolution. I find the tenant filed her Application within the 5 days allowed and as a result, she does not require additional time to submit her Application. I amend the tenant's Application to exclude the matter of more time.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to an order allowing the tenant to reduce her rent; pursuant to Sections 46 and 65 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 1, 2011 for a month to month tenancy beginning on May 1, 2011 for a monthly rent of \$700.00 due on the 1st of each month;
- Copies of two Notice of Rent Increases raising the tenants rent from \$700.00 to \$715.00 on May 1, 2015 and from \$715.00 to \$735.00 on February 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on April 4, 2017 with an effective vacancy date of April 17, 2017 citing \$735.00 in unpaid rent; and
- A copy of a Proof of Service – Notice to End Tenancy document signed by the landlord confirming the Notice to End Tenancy was served to the tenant by attaching it to the rental unit mailbox on April 4, 2017 at 3:00 p.m. The document is also signed by the landlord's witness to this service.

The parties agreed that at the time of the hearing the tenant had not paid rent for the months of April and May 2017. The landlord stated that when the tenant did not pay the rent for April 2017 he issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord referred to his Proof of Service document to confirm that he placed the notice in the tenant's mail box on April 4, 2017 and that this service was witnessed by a third party. The tenant testified that she does not check her mail every day and in this case she had not checked her mailbox until April 9, 2017 and she received the Notice.

The tenant stated that she did not pay the rent because the landlord had increased the rent but that they had not made any improvements to the property. She also stated that there are so many things wrong with the property and she does not feel safe living in the property. The tenant stated she had the rent money in the bank but that she would not be paying the landlord.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 26 of the *Act* states 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 the right under this *Act* to deduct all or a portion of the rent.

From the tenant's testimony and submissions I find the tenant has provided no evidence that she has authority under the *Act*, regulations or tenancy agreement to withhold any amount of rent from the landlord. In addition, I accept the testimony of both parties that the tenant has not paid the landlord rent for the months of April and May 2017.

Therefore, I am satisfied that on the day the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent (April 4, 2017), the tenant owed the landlord rent in the amount of \$735.00 and the landlord was allowed to end the tenancy through issuance of the 10 Day Notice.

I also accept, from the testimony of both parties, the tenant has failed to pay the landlord rent for the month of May, 2017 in the amount of \$735.00.

I accept the tenant did not receive the landlord's Notice to End Tenancy until April 9, 2017 and as such, pursuant to Section 53 of the *Act*, the effective vacancy date is amended to April 19, 2017.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,570.00** comprised of \$1,470.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 19, 2017

Residential Tenancy Branch