



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR, FF (Landlord's Application)
 MT, CNC (Tenant's 1st Application)
 MT, CNR (Tenant's 2nd Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenant. The Tenant also filed a second Application which was also determined in this hearing.

The Tenant filed her first Application on May 31, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") which was dated and received by the Tenant on April 26, 2017. The Tenant also applied for more time to cancel the 1 Month Notice.

The Landlord filed her Application on June 12, 2017 requesting: an Order of Possession to end the tenancy pursuant to the 1 Month Notice; a Monetary Order for unpaid rent; and to recover the filing fee from the Tenant.

The Tenant then filed a second Application on June 14, 2017 applying to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice"), and for more time to cancel the 10 Day Notice.

Preliminary Issues

Both parties appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Applications. The hearing process was explained and no questions were asked on how the proceedings would be conducted. Both parties were given a full opportunity to present evidence, make submissions, and to cross examine the other party on the evidence provided.

At the start of the hearing, I asked the Tenant her reasoning for making the second Application rather than following the procedure of amending the Application as required by Rule 4 of the Residential Tenancy Branch Rules of Procedure (the "Rules").

The Tenant explained that her first Application was to dispute the 1 Month Notice and the second Application was filed because she received the 10 Day Notice from the Landlord after she had filed the first Application. The Tenant stated that she was not aware of the procedure for amending the first Application and no one informed her to do this so she filed the second Application.

I noted that the Tenant's second Application before me did not elect to have the 10 Day Notice cancelled and only elected to request more time to cancel the 10 Day Notice. In addition, there was no copy of the 10 Day Notice in the file from either party before me.

The Tenant explained that she did elect to cancel the 10 Day Notice and had ticked off the box for this. The Landlord confirmed that she had been served with the Tenant's second Application and that it did contain a request to cancel the 10 Day Notice as well as more time to cancel it. Therefore, I amended the Tenant's Application before me with her request to have the 10 Day Notice cancelled.

In addition, I also requested both parties to confirm the details on the 10 Day Notice were correct as it appeared on the copies in front of them. I asked the Landlord to fax me a copy of the 10 Day Notice so that I could determine if it complied with the Act and for a copy to be retained in the Tenant's second Application.

The parties intimated at the start of the hearing that they were willing to reach agreement to end the tenancy pursuant to the 1 Month Notice. However, the Landlord stated that she was not interested in any mutual agreement to end the tenancy for unpaid rent. The Landlord had not elected to request an Order of Possession for unpaid rent on her Application because she was under the impression that this matter was going to be dealt with under the Tenant's second Application. Therefore, I turned my mind to the Tenant's second Application first as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession to end the tenancy for unpaid rent? If so, what is to happen to the 1 Month Notice?
- Is the Landlord entitled to a Monetary Order for unpaid rent and recovery of the filing fee?

Background and Evidence

The parties agreed that this tenancy started on March 12, 2017 on a month to month basis. Although a copy of the tenancy agreement was not provided into evidence, the parties agreed that the Tenant is to pay \$750.00 in rent on the first day of each month.

The Tenant paid a security deposit of \$375.00 at the start of the tenancy which the Landlord still retains.

The Tenant confirmed receipt of the 10 Day Notice dated June 9, 2017 on the same day by personal service. The 10 Day Notice shows a vacancy date of June 19, 2017 due to \$725.00 for unpaid rent due on June 1, 2017. Both parties confirmed these details during the hearing as being the correct content of the 10 Day Notice.

The Landlord testified that on June 16, 2017, the Tenant paid a portion (\$570.00) of the unpaid rent in this tenancy. However, there is still a balance of \$255.00 in rental arrears for this tenancy which the Tenant has not paid and for which the Landlord seeks a Monetary Order for.

The Tenant applied to dispute the 10 Day Notice on June 9, 2017 and requested more time to dispute the 10 Day Notice. The Tenant explained that her understanding of her request for more time was in relation to making the payment as she was still trying to sort out an issue that had materialised since June 2017 with a government third party who was paying the majority portion of the rent payable. The Tenant confirmed that she was in rental arrears of \$255.00 but asserted that she was close to resolving the issue with the government agency and will be able to make payment to the Landlord of the arrears in this tenancy soon.

The Landlord was not confident and did not want to give the Tenant more time for her to pay the rental arrears and requested that the tenancy be ended as soon as possible for unpaid rent.

Analysis

Section 46(1) of the *Residential Tenancy Act* (the "Act") allows a landlord to end a tenancy for unpaid rent.

In relation to the 10 Day Notice, I have examined the copy of the 10 Day Notice and I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence that the Tenant received the 10 Day Notice on June 9, 2017 by personal service pursuant to Section 88(a) of the Act.

The Tenant filed her second Application disputing the 10 Day Notice on June 14, 2017. Therefore, I find it was filed within the five day time limit provided for by Section 46(4) (b) of the Act. As the Tenant filed the second Application within the correct time limits of

the Act, the Tenant's request for more time to make the second Application is moot and is hereby dismissed.

The Tenant was informed in the hearing that her request for more time to file the second Application does not pertain to me allowing her more time to pay rent but relates to the Tenant's need to provide evidence of exceptional circumstances which prevented the Tenant from filing it outside of the five day time limit stipulated by the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act, unless the Tenant has authority under the Act to withhold or deduct from rent.

In this case, the Tenant has failed to disclose any authority for her to have not paid the rental arrears outstanding to the Landlord. An issue regarding payment being made by a third party for the Tenant is also not legal authority to not pay rent. In such a case, a tenant is to resolve such matters separately from their requirement to pay rent. Accordingly, I deny the Tenant's request on her second Application to cancel the 10 Day Notice. The Tenant's second Application is hereby dismissed.

Section 55(1) of the Act states 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.

As I have made a finding that the 10 Day Notice complies with the Act and the Tenant's second Application is dismissed, the Landlord must now be granted an Order of Possession.

As the Tenant is occupying the rental unit while in rental arrears and past the vacancy date of the 10 Day Notice, the Order of Possession is effective two days after service upon the Tenant. The Act does not allow me to take factors, such as the difficulty a tenant may have from having to vacate the rental unit, as a means to extend this time limit.

The Tenant must be served with a copy of the order and this may then be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental unit.

As the Landlord has been issued with an Order of Possession to end the tenancy under the 10 Day Notice, the Landlord's Application for an Order of Possession under the 1

Month Notice, and the Tenant's first Application to cancel the 1 Month Notice, is now moot and is hereby dismissed without leave to re-apply.

With respect to the Landlord's monetary claim, I grant the Landlord the undisputed amount of rental arrears of \$255.00. As the Landlord has been successful in proving unpaid rent, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$355.00.

The Landlord is issued with a Monetary Order for this amount. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of the above orders are attached to the Landlord's copy of this Decision.

The Tenant may also be held liable for any costs incurred by the Landlord for enforcing the above orders.

Conclusion

The Tenant breached the Act by not paying rent. The Landlord is granted a two day Order of Possession and a Monetary Order for unpaid rent and the filing fee of \$255.00. The Tenant's Applications are dismissed without leave to re-apply. 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: July 19, 2017

Residential Tenancy Branch