



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR CNC FF DRI MNDC MNSD OLC RP PSF RPP LRE LAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- plus various other remedies under the Act;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Preliminary and Procedural Matters: Scope of Application & Late Evidence of Applicant

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice(s) to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

The landlord acknowledged service of the tenant's application and evidence package. However, the landlord argued the tenant served her with an additional 1 page evidence package on July 20, 2017, four days prior to the hearing. The tenant acknowledged this additional evidence package was not served to the landlord until July 20, 2017. The tenant testified his witness was not available to provide her statement but provided no supporting documents in support of the reason for the witness not being available.

Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant's evidence to be received by the respondent and the Branch not less than 14 days

before the hearing. The tenant failed to show why the additional one page evidence package was not available at the time the tenant's original evidence package was submitted. The tenants' one page evidence package was not accepted or considered in this decision.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on August 1, 2016 with a monthly rent of \$700.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy.

The tenant acknowledged receiving the 10 Day Notice on June 3, 2017. The outstanding rent amount as per the 10 Day Notice was \$700.00 which was due on May 1, 2017.

The landlord testified the tenant failed to pay rent of \$700.00 that was due on May 1, 2017. The landlord inquired about the outstanding rent on May 4, 2017 and the tenant advised he was not able to pay but would pay both May and June rent on June 1, 2017.

The landlord testified the tenant usually pays rent by e-transfer and testified that rent for June 2017 was paid by e-transfer on June 2, 2017. The landlord testified the tenant had still not paid rent for May 2017 which is why the 10 Day Notice was served on June 3, 2017 after the landlord only received \$700.00 for June rent. The landlord testified the tenant did not pay the outstanding rent within 5 days of the 10 Day Notice being served and has also not paid rent for July 2017.

The tenant testified that he paid rent for May 2017 to the landlord in cash. He testified the landlord demanded to be paid in cash. He testified that he borrowed half the rent money from a neighboring tenant and paid the rent in full to the landlord. He asked for a receipt but was not provided one. He testified that the neighboring tenant witnessed the cash payment.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant has failed to provide sufficient evidence to support the outstanding rent was paid to the landlord in cash. The tenant failed to provide a receipt for such payment and also did not call the witness to testify in the hearing. I prefer the landlord's testimony over that of the tenant's and find that on a balance of probabilities the tenant failed to pay rent for the month of May 2017.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: July 24, 2017

Residential Tenancy Branch