



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR CNR MNDC LRE FF

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:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- 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. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

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 to End Tenancy for unpaid rent, 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.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of October and November 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began on February 1, 2017 with a monthly rent of \$750.00 payable on the 1st day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The landlord agent testified the tenant failed to pay the \$750.00 rent payable on September 1, 2017. The landlord's agent testified that on September 19, 2017 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$2250.00. The landlord testified that this includes unpaid rent for the months of September, October and November 2017.

The tenant acknowledged service of the 10 Day Notice. The tenant testified that she paid September 2017 rent in cash to the landlord on September 5, 2017. The tenant testified the landlord did not provide her with a receipt for this payment. The tenant testified that her boyfriend witnessed the cash payment but he was not called to testify during the hearing. The tenant acknowledged October 2017 was withheld due to repairs required to the rental unit. The tenant testified that she withheld November 2017 rent as this was her "free Month" pursuant to a 2 Month Notice to End Tenancy which she received in August 2017.

The landlord did not dispute that the tenant had also been issued a 2 Month Notice. The landlord denied receiving any cash payment for the month of September 2017.

Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on September 22, 2017, three days after its posting, pursuant to sections 88 & 90 of the Act.

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 Notice or dispute the 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.

I find on a balance of probabilities that the tenant did not make any cash payment for the September 2017 rent. The tenant could have provided bank statements in support of this alleged payment but failed to do such. The tenant also failed to present testimony from the alleged witness.

Although the tenant filed an application for dispute resolution, I find the tenant's application must be dismissed as the tenant failed to pay the outstanding rent in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

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 landlord's 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.

I accept the landlord's claim for outstanding rent for the months of September and October 2017 in the total of \$1500.00. The landlord's claim for recovery of November 2017 rent is dismissed as the tenant was entitled to this month free pursuant to the 2 Month Notice.

The landlord continues to hold a security deposit of \$375.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1125.00.

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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1125.00. 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: November 14, 2017

Residential Tenancy Branch