



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, FF

Introduction

This hearing was convened in response to an application and amended application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy - Sections 46 and 47;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord objects to the presence of the Tenant’s advocate and refers to a Supreme Court matter and the Law Society of BC. The Landlord states that he is making submissions based on the evidence package provided to the Residential Tenancy Branch (the “RTB”) and the Tenant on November 16, 2017. It is noted that this package was accepted by the RTB however it was not provided to the Arbitrator by the RTB for this hearing. The Landlord does not wish to adjourn the hearing in order to have this package considered for the dispute. The Advocate states that he is not attending the hearing as legal counsel. As nothing in the Act or RTB Rules of Procedure restricts any person from acting as an Advocate I find that the Landlord’s objections have no relevance to these proceedings and the Tenant is entitled to have the Advocate attend the hearing.

As the Landlord does not wish to adjourn the matter in order for the evidence package to be available I consider that the Landlord may provide oral evidence at the hearing in relation to any evidence that would otherwise have been considered through the evidence package. I note that the evidence package itself will not be considered.

Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the landlord entitled to an order of possession?

Is the Tenant entitled to compensation for a landlord title search?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The Tenant moved into the upper portion of a house in either late November or December 1, 2016. The person named as Landlord in the Tenant's application (the "Landlord") lives in the basement suite. There is no access to the upper unit from the basement suite. The Landlord has its own kitchen and bathroom. The Tenant has its own kitchen and bathroom. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Tenant paid the Landlord \$600.00 as a security deposit. The Tenant has been paying rent of \$1,200.00 to Landlord since moving into the unit. The Tenant received a one month notice to end tenancy for cause dated September 1, 2017. On November 2, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by placing the Notice in the Tenant's mailbox. The Notice sets out unpaid rent of \$1,200.00 that was due November 1, 2017 and an effective move-out date of December 1, 2017.

The Tenant states that Landlord is not the Landlord for the upper portion of the unit. The Tenant states that no written tenancy agreement was entered into and that the Landlord has refused to provide a written tenancy agreement. The Tenant states that

upon locating the owner of the unit the Tenant discovered that the owner was not aware of the tenancy. The Tenant agrees that no rent has been paid for November 2017.

The Landlord states that on October 31, 2016 the owner of the house entered into a written tenancy agreement with the Landlord for both the upper and lower suites and that the owner agreed that the Landlord could rent the upper suite. The Landlord states that a copy of an email providing this permission was in the evidence package. The Landlord states that the owner was upset that the Tenant had contacted him and that the Landlord himself only deals with the owner's property manager.

The Tenant states that a land claim search was conducted for the purposes of providing evidence of the owner ship of the unit. The Tenant claims \$50.87.

Analysis

Section 1 of the Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. "Landlord" is defined to include, inter alia, a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit. Based on the Tenant's evidence of the agreed terms for the payment of rent and the collection of a security deposit I find that there is an oral tenancy between himself and the Landlord. Based on the Tenant's evidence that the rent has always been paid to the Landlord, accepting the Landlord's evidence that a tenancy agreement exists between the Landlord and the owner, and the undisputed evidence that the Landlord does not reside in the Tenant's upper unit, I find that the Landlord is a Landlord as defined under the Act.

Section 26 of the Act provides 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. Based on the undisputed evidence that no rent was paid for November 2017 and as there is no evidence that the Tenant had any right not to pay the rent I find that the Landlord's Notice is valid. I therefore dismiss the Tenant's claim for a cancellation of the Notice.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the finding of a valid Notice I find that the Landlord must be granted an order of possession. As the Notice carries an effective date of December 1, 2017 I make this order of possession effective for this same date. As the tenancy will end based on the valid Notice it is not necessary to consider the validity of the one month notice to end tenancy for cause and the claim for a cancellation of this notice is dismissed.

As there is nothing in the Act that provides for compensation for participating in the proceedings, including the collection and provision of evidence, other than the recovery of the filing fee and as the claim for compensation is for the cost of evidence, I find that the Tenant is not entitled to recovery of this cost and I dismiss this claim. As neither the

cancellation or compensation claim has been successful I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on December 1, 2017.

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 29, 2017

Residential Tenancy Branch