



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, OLC, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 7, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply - Section 62;
4. An Order setting conditions on the Landlord's right of entry - Section 79; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 16, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matters

The Landlord includes in its claim for unpaid rent an amount of rent from May 2017.

This amount was not included in the amount set out as unpaid in the 10 day notice to end tenancy for unpaid rent (the “Notice”) that is the primary subject of the hearing. The Landlord did not amend the application to include this past month. The Tenant includes a claim for compensation in relation to heating issues during the tenancy.

Rule 2.2 of the Residential Tenancy Branch rules of Procedure (the “RTB Rules”) provides that claims are limited to what is stated in the application. Rule 2.3 of the RTB Rules provides that unrelated claims in an application may be dismissed with or without leave to reapply. Rule 6.2 of the RTB Rules allows for an amendment at the hearing for matters that would reasonably flow from the original claim. As the Landlord’s application was not amended to increase the compensation being claimed, as the amount was not included in the amount of unpaid rent set out in the Notice and as past rent does not flow from the original claim for unpaid rents as of September 2017, I dismiss this claim. As the matter of continuing unpaid rent for October, November and December 2017 flows from the original Notice and claim I amend the application to include claims for these months. As the Tenant’s claim for compensation is not related to the primary matter of the Notice I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Notice valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to an order restricting the Landlord’s entry into the unit?

Background and Evidence

The following are undisputed facts: A written tenancy agreement was entered into between the Landlord and Tenant MD. Tenant EG, who is actually Tenant AS did not sign the agreement. Rent of \$1,350.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit. The Tenant failed to pay full rent for September 2017 and owed arrears of \$675.00. The Tenant paid no rent for October 2017 and on October 4, 2017 the Landlord served the Tenant with the Notice by giving it personally to Tenant AS. The Tenant has not paid

the arrears or the rent for November and December 2017 and has not moved out of the unit.

The Tenant states that rents were unpaid due to the condition of the unit and the Landlord's failure to maintain the unit. The Tenant seeks an order for the Landlord's compliance and an order restricting the Landlord's access to the unit.

The Landlord seeks an order of possession for December 31, 2017 and unpaid rents.

Analysis

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 Tenant's evidence that rent was not paid due to the Landlord's lack of action to maintain the unit, I find that the Tenant has not substantiated that they have any right to withhold rent payments. I find therefore that the Notice is valid and I dismiss the Tenant's claim for its cancellation. The Tenant remains at liberty to make an application in relation to any losses it may have incurred during the tenancy due to the Landlord's breach of the Act or the tenancy agreement.

Based on the undisputed evidence of unpaid rent without valid reason I find that the Landlord has substantiated an entitlement to the claimed amount of **\$2,025.00** for unpaid September and October 2017 rent and to **\$2,700.00** for unpaid November and December 2017 rent.

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 that the Notice is valid I find that the Landlord is entitled to an order of possession and I grant this order to be effective 1:00 p.m. on December 31, 2017. As the Landlord has been successful with its claim for rent I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,825.00**. Deducting the security deposit of **\$675.00** plus zero interest leaves **\$4,150.00** owed by the Tenant to the Landlord. As Tenant EG, as named by the Landlord, or Tenant AS as corrected, is not a party to the tenancy agreement I make the monetary order solely in the name of Tenant MD.

As the tenancy is ended shortly I decline to consider the Tenant's claims for compliance and the limitation on the Landlord's right of entry to the unit and I dismiss these claims. As the Tenant has not been successful I also decline to award recovery of the filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on December 31, 2017. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$675.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **\$4,150.00**. If necessary, this order may be filed in the Small Claims 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: December 20, 2017

Residential Tenancy Branch