



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRT, OLC, OPT, PSF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on October 4, 2017 wherein she sought the following relief:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an Order for possession of the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
- a Monetary Order for the cost of emergency repairs; and,
- an Order that the Landlord provide services or facilities required by law.

The hearing was conducted by teleconference on December 19, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to an Order for possession of the rental unit?

3. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement and to provide services or facilities required by law?
4. Is the Tenant entitled to a Monetary Order for the cost of emergency repairs?

Background and Evidence

Residential Tenancy Branch Rule of Procedure 2.3 allows Arbitrators to use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the priority claim before me is the validity of the Notice and whether this tenancy will continue or not.

During the hearing the Tenant testified that she was on the tenancy agreement with the Tenant, S.D. Introduced in evidence was a copy of the residential tenancy agreement between the Landlord, the Tenant in the within action, J.G., and the Tenant, S.D. This agreement was signed by the Landlord and S.D. It provided that monthly rent was payable in the amount of \$2,400.00. The Tenant stated that she and S.D., and two other Tenants, P. and A., moved into the rental property on July 1, 2017. She confirmed that she resides in the basement suite and they share the \$2,400.00 rent equally such that her share of the rent is \$600.00.

Provided in evidence was a copy of text communication between the parties wherein the Tenant writes that she has a separate lease for the basement. The Landlord writes that she does not have a separate lease.

The Landlord testified that the Tenants failed to pay rent and the Landlord issued a 10 Day Notice to End Tenancy. Introduced in evidence was a proof of service indicating that S.D. was served the Notice on October 31, 2017. Neither party submitted a copy of the Notice in evidence.

The parties agreed that S.D. applied to dispute the Notice; a hearing of her application is set for January 24, 2018.

The parties further agreed that on November 26, 2017, S.D., A. and P. vacated the rental unit.

The Landlord testified that the Tenants failed to pay rent for October, November and December 2017.

The Tenant testified that she paid the August and September rent in cash, following which she paid rent by electronic transfer. She also claimed that she did not pay the full amount of rent for September due to the fact she paid for emergency repairs as a result of pipes bursting in the basement.

The Tenant testified that she paid her portion of the rent to the Landlord by electronic transfer. Copies of those transfers were provided in evidence and confirmed the following payments were made to the Landlord:

- October 3, 2017 \$550.00
- July 31, 2017 \$600.00.

Two other transfers were noted on September 8, 2017 in the amount of \$160.00 and \$600.00 on October 2, 2017, however those transfers were noted as “stopped”. The Tenant stated that the Landlord entered the wrong password such that she had to send them again. There was no evidence those amounts were resent, save and except for the October 3, 2017 transfer which was sent after the October 2, 2017 transfer.

The Landlord stated that he did not receive rent for October, November or December 2017.

Analysis

After consideration of the evidence before me, and on a balance of probabilities, I find as follows.

I accept the Landlord’s evidence that the upper and lower floor of the rental home were included in the tenancy agreement with S.D. and J.G., and for which S.D. and J.G. agreed to pay \$2,400.00. Notably the Tenant’s Application for Dispute Resolution only references the Basement of the rental property. Pursuant to section 64(3)(c) of the *Act*, I amend the Tenant’s Application to remove the notation “BSMT” as I find the tenancy included both the upper and lower units.

I also accept the Landlord’s evidence that he did not receive the required rent payments for October, November and December 2017. While the evidence suggests J.G. paid \$550.00 on October 3, 2017, she failed to submit any evidence to show that the full \$2,400.00 was paid for October, or that any payments were made for November and December 2017.

Section 26 of the *Act* provides that rent must be paid, even if the Landlord fails to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement. While the Tenant alleged she did not pay the full amount of rent in September due to alleged emergency repairs, she had no valid reason for not paying rent in November and December 2017. Accordingly I dismiss her request to cancel the Notice.

Further, the parties agreed that the Tenant S.D. had vacated the upper floor of the rental unit on November 26, 2017. As S.D. is named as a Tenant on tenancy agreement, she ended the tenancy when she vacated the rental unit. For greater clarity I reproduced section 44 of the *Act* as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

[emphasis added in bold]

Conclusion

The Tenant claim for an Order canceling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The Landlord is granted an Order of Possession effective two (2) days after service. The Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

The Tenant's claim for an Order of possession of the rental unit is dismissed without leave to reapply.

The Tenant's claim for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement; and, provide services or facilities required by law, is dismissed without leave to reapply as it is no longer relevant.

The Tenant's claim for a Monetary Order for the cost of emergency repairs is dismissed with leave to reapply.

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 22, 2017

Residential Tenancy Branch