



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's Application made October 23, 2017: OPR; MNR; MNDC; FF

Tenant's Application made October 23, 2017: MT; CNR; MNDC; OLC; PSF; OPT; RR
FF

Introduction

This matter was originally heard on January 11, 2018, and was convened in response to cross-applications. The Landlord seeks an Order of Possession; a monetary order for unpaid rent; a monetary order for compensation for money owed under the Act, regulation or tenancy agreement; and recovery of the cost of the filing fee from the Tenant.

The Tenant seeks more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued October 12, 2017 ('the 10 Day Notice'); to cancel the Notice; a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord provide services or facilities required by law; an Order of Possession for the Tenant; a rent reduction for repairs, services or facilities agreed upon but not provided; and recovery of the cost of the filing fee from the Landlord.

These matters were adjourned to January 19, 2018. An Interim Decision was issued on January 11, 2018, which should be read in conjunction with this Decision.

The Landlord's agent SA and the Tenant attending the reconvened Hearing on January 19, 2018, and gave affirmed testimony.

Preliminary Matters

An application to cancel a notice to end tenancy for unpaid rent must be made within 5 days of **receipt of the notice**. In this case, the Tenant stated that she was out of town when the notice was posted to her door on October 12, 2017. She stated that she was not sure when she received it. Her Application provides,

Notice delivery date: October 12, 2017

Notice delivery method: Posted on the door

The Tenant was very confused with respect to when she actually received the Notice. Further to the provisions of Section 90 of the Act, I find that the Tenant was deemed to have received the Notice three days after it was posted to her door, October 15, 2017. Therefore, the Tenant was required under the Act to make her Application on or before October 20, 2017. The Tenant made her Application on October 23, 2017.

With respect to the Tenant's Application for an extension of time to make her application to cancel the Notice, the Tenant provides in her Application:

Description:

Filed on oct 20 but did not qualify for fee waiver and had no power or internet to make arrangements and rtb phone lines were not accepting calls. Finally got through Monday 23

Rectangular Snip

Our records show no interruption of service with respect to our telephone lines on October 20, 2017; however, it is possible that the Tenant had difficulty getting through to the Branch on October 20, 2017, because weather was inclement at the end of October, 2017.

I gave the Tenant the benefit of the doubt and allowed her application for an extension of time to dispute the Notice.

With respect to the Tenant's application for compensation under the Act, regulation or tenancy agreement, I find that this portion of her Application is not sufficiently related to the main reason for filing her Application, which is to cancel the Notice. Therefore, pursuant to the provisions of Rule 2.3 of the Rules of Procedure, I dismissed this portion of her Application **with leave to reapply**.

The Tenant applied for an Order that the Landlord comply with the Act, regulation or tenancy agreement but did not provide details with respect to with which section of the Act, regulation or tenancy agreement she seeks the Landlord to comply. Therefore, this portion of the Tenant's Application is dismissed.

Issue(s) to be Decided

- Is the Notice a valid notice to end the tenancy?
- Is the Landlord or the Tenant entitled to an Order of Possession of the rental unit?
- Is the Landlord entitled to a monetary award for unpaid rent and loss of revenue?

Background and Evidence

This tenancy began on January 1, 2017. Monthly rent is \$1,600.00, due on the first day of each month.

On October 12, 2017, the Landlord issued the Notice, which alleges:

BECAUSE:			
You have failed to pay rent			
in the amount of \$ 11,500.00			
That was due on:			
1	OCT	2017	
day	month	year	

The Landlord's evidence is that the Tenant made the following payments towards rent since the beginning of the tenancy:

Date Due	Amount Due	Amount Paid	Date Paid
		\$	
JAN 1, 2017	\$ 1,600.00	\$	
FEB 1, 2017	\$ 1,600.00	\$	
MAR 1, 2017	\$ 1,600.00	\$900.00 & 2,400.00	MAR 21 & 31
APR 1, 2017	\$ 1,600.00	\$200.00	APR 13
MAY 1, 2017	\$ 1,600.00	\$1,000.00	
JUN 1, 2017	\$ 1,600.00	\$	

JUL 1, 2017	\$ 1,600.00	\$	
AUG 1, 2017	\$ 1,600.00	\$	
SEP 1, 2017	\$ 1,600.00	\$	
OCT 1, 2017	\$ 1,600.00	\$	
Total	\$16,000.00	\$4,500.00	

The Landlord's agent SA stated that the Landlord has received no further payments towards outstanding rent and that the Landlord has lost additional revenue in the amount of \$4,800.00 for the months of November and December, 2017 and January, 2018.

The Tenant acknowledged that she has paid no rent for November and December, 2017 or for January, 2018. She testified that she paid half of October's rent on October 6, 2017; all of September's rent on September 1, 2017; and all of August's rent on August 11, 2017, by **cash**. When questioned further, she stated that she paid August's rent by **e-transfer** and that she was confirming the rent payments by checking "screen shots" of her banking information that she had on her phone. The Tenant was very confused and agitated while she was giving her testimony.

Analysis

Parties are expected to be prepared for the Hearing and to provide clear and consistent evidence to support their position. In this case, the Tenant was not prepared, was confused, and gave inconsistent testimony. The Tenant testified that she was reading information with respect to payment of rent from "screen shots" on her phone, but provided no electronic evidence to support her testimony. The Tenant did not upload any "screen shots" to the Residential Tenancy Branch and the Landlord's agent testified that the Tenant did not serve the Landlord with any electronic or documentary evidence.

Based on the evidence provided by the Landlord, and the lack of consistent testimony provided by the Tenant, I accept the Landlord's version of events and find that the Notice is a valid notice to the end the tenancy. I find that the tenancy ended on October 25, 2017, and that the Tenant is overholding. The Landlord is entitled to an Order of Possession. The Tenant's application for an Order of Possession is dismissed.

The tenancy is ended and therefore I dismiss the Tenants' application for an Order that the Landlord provide services or facilities required by law; and a rent reduction for repairs, services or facilities agreed upon but not provided.

I find that the Landlord is also entitled to a monetary award in the amount of \$16,300.00 for unpaid rent and loss of revenue, as claimed on the Landlord's Application.

The Tenant has not been successful in her Application and therefore her request for recovery of the filing fee is dismissed.

The Landlord's Application had merit and therefore I allow his request for recovery of the cost of the filing fee from the Tenant.

Conclusion

The Tenant's request for compensation under the Act, regulation or tenancy agreement is **dismissed with leave to reapply. The remainder of the Tenant's Application is dismissed without leave to reapply.**

The Landlord is hereby provided with an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is also hereby provided with a Monetary Order in the amount of **\$16,400.00**, representing unpaid rent up to and including October, 2017, loss of revenue for the months of November, 2017, December, 2017, and January, 2018, and recovery of the cost of the \$100.00 filing fee. After service of this Order upon the Tenant, this Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: January 19, 2018

Residential Tenancy Branch