



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, OLC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed that no documentary evidence was filed by either party. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order for the landlord to make repairs, an order authorizing the tenant to reduce rent and for an order to suspend or set conditions on the landlords right to enter the rental unit. As these sections of the tenant's application are unrelated to the main

section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Although neither party submitted a copy of the 10 Day Notice in dispute, both parties confirmed in their direct testimony that the landlord served the tenant with a 10 Day Notice for Unpaid Rent dated November 7, 2017 by posting it to the rental unit door on November 7, 2017. The landlord also clarified that following this the tenant's roommate was viewed removing the 10 Day Notice dated November 7, 2017 shortly after from the rental unit door.

Both parties confirmed that the 10 Day Notice dated November 7, 2017 sets out that the tenant failed to pay rent of \$750.00 that was due on November 1, 2017 and provides for an effective end of tenancy date of November 17, 2017. Both parties were advised that under the service provisions for the 10 Day Notice the effective end of tenancy date is automatically corrected to November 20, 2017.

The tenant claims that rent payments are made automatically from the ministry due to a disability pension. The tenant claims that the landlord contacted the tenant's "worker" and informed that person that the tenant had been evicted. The tenant claims that because of this the automatic rent payments were not made. The landlord disputes this claim stating that he did not contact the tenant's "worker".

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case both parties have confirmed that the landlord served the tenant with the 10 Day Notice dated November 7, 2017 by posting it to the rental unit door. The tenant

confirmed that no rent has been paid due to personal medical issues, but that the tenant does have the money owed to pay rent.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case the tenant has claimed that the landlord interrupted the automatic rent payments by contacting the tenant's "worker" and notifying him that the tenant had been evicted. The landlord has disputed this claim. I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to support this claim. As such, the tenant's application to cancel the 10 Day Notice is dismissed.

Pursuant to section 55 the landlord is entitled to an order of possession upon the 10 Day Notice being upheld. The landlord is granted an order of possession for unpaid rent and to be effective 2 days after service upon the tenant.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenant. 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.

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 25, 2018

Residential Tenancy Branch