



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, LAT, LRE, OLC
OPRM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), cancellation of the 10 Day Notice, authorization to change the locks of the rental unit, an order suspending or setting conditions on the Landlord’s right to enter the rental unit, and an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession in relation to the 10 Day Notice and a Monetary Order for unpaid rent.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Landlords and the agent for the Tenant (the “Agent”), all of whom provided affirmed testimony. The Tenant did not attend. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addressed provided by them in the online dispute resolution system.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Agent requested that the hearing be adjourned as the Tenant does not currently have a phone in order to attend the hearing. Section 7.8 of the Rules of Procedure state that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. It also states that a party or their Agent may request that the hearing be adjourned and that the arbitrator will determine whether the circumstances warrant an adjournment.

Although the Agent requested an adjournment because the Tenant could not attend herself, he also acknowledged that he was in attendance to act on her behalf as permitted under section 6.7 of the Rules of Procedure. As a result, I find that despite the fact the Tenant was not personally in attendance, she was represented in the hearing by a party of her choosing. Further to this, the Tenant had ample notice of the date and time of the hearing from both her own Application and the Notice of Hearing served on her by the Landlord. As a result, I find that it was incumbent on the Tenant to make arrangements to attend the hearing, should she wish to do so. As a result, I do not find her lack of a phone sufficient reason to adjourn the hearing, especially given the significant prejudice to the Landlord in adjourning the hearing in this case and in light of the fact that her Agent was in attendance on her behalf. Based on the above, the Agent's request for an adjournment was denied and the hearing proceeded as scheduled.

Preliminary Matter #2

In her Application the Tenant sought multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice and the Landlord applied for an Order of Possession and a Monetary Order in relation to the 10 Day Notice, I find that the

priority claims relate to whether the tenancy will continue and the payment of rent. Further to this, I find that the parties were given a priority hearing date to deal with the 10 Day Notice. As the other claims are not sufficiently related to rent or the continuation of the tenancy, I therefore exercise my discretion to dismiss the Tenant's claims for authorization to change the locks of the rental unit, an order suspending or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement with leave to re-apply.

Preliminary Matter #3

In her Application the Tenant indicated that she received a 10 Day Notice on December 31, 2017, that she was filing her Application outside of the legislated timeframe on January 11, 2018, and that she was requesting more time to make the Application. Neither party submitted a copy of this 10 day Notice but the Landlord acknowledged that it was served. In the hearing the Agent testified that the Tenant was unable to file the Application on time due to illness, however, he was only able to provide generalized information about the timeframe of the illness at the end of November and the start of December and no medical documentation was submitted to corroborate his testimony that the Tenant was incapacitated during the application period. Although the Agent testified that the Tenant was also dealing with a family matter, he acknowledged that this did not prevent the Tenant from making the Application.

Section 66 of the *Act* states that the director may extend a time limit established under the *Act* only in exceptional circumstances. As the exact dates of the Tenant's illness and any resulting hospitalization were not provided to me and no medical documentation was submitted to corroborate the Agent's testimony that the Tenant was medically unable to apply within the time limits required in section 46(4) of the *Act*, I find that the Agent has failed to satisfy me that the Tenant had an exceptional circumstance which prevented her from filing her Application on time. As a result, the Tenant's Application seeking more time to dispute the 10 Day Notice received December 31, 2017, and her Application disputing the 10 day Notice are dismissed without leave to reapply.

Based on the above, the hearing proceeded based on the Landlord's Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began on October 15, 2014, and that rent in the amount of \$685.00 is due on the first day of each month. The Landlords testified that rent was subsequently increased to \$700.00 on October 1, 2016, and submitted a copy of the Notice of Rent Increase served on the Tenant for my review.

The Landlords testified that the Tenant was repeatedly late paying rent and sometimes did not pay rent at all. As a result, the Landlords testified that two separate 10 Day Notices were served on the Tenant. As the Landlord's Application related only to the second 10 Day Notice and the Tenant's Application relating only to the first 10 Day Notice has already been dismissed without leave to reapply, I have only included the information relating to the second 10 Day Notice below.

The 10 Day Notice in the documentary evidence before me, dated January 12, 2018, has an effective vacancy date of January 25, 2018, and states that as of January 1, 2018, the Tenant owed \$2,600.00 in outstanding rent. The Landlords testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on January 12, 2018, and personally served on her on January 13, 2018. The Landlords also submitted a Proof of Service signed by the Tenant indicating that she personally received the 10 Day Notice on January 13, 2018. The Tenant was not present in the hearing and the Agent testified that he could not confirm whether this information was accurate or not.

The Landlords testified that the Tenant currently owes \$3,300.00 in outstanding rent for September 2017 – March 2018, and submitted a Direct Request Worksheet in support of their testimony. The Landlords stated that the Tenant has only made three rent payments totalling \$1,040.00 since September 1, 2017; one in the amount of \$200.00 on October 1, 2017, one in the amount of \$700.00 on January 29, 2018, and one in the amount of \$140.00 in February 2018. The Landlords also testified that the \$140.00

payment was returned to the Tenant in error and that they have the receipt to confirm this return. However, the receipt was not before me for consideration.

The Agent testified that he did not know what rent was currently outstanding or what rent payments have been made by the Tenant other than the \$700.00 payment on January 29, 2018, and the \$140.00 payment in February 2018. The Agent also stated that he is unaware of whether or not he \$140.00 payment made by the Tenant in February 2018, was returned to her.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and I find that the Tenant was personally served with the 10 Day Notice on January 13, 2018, the date

she signed the Proof of Service document acknowledging receipt. I also find that the Tenant was obligated to pay the monthly rent of \$700.00 on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 25, 2018, and the Landlords are therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed, and I am satisfied that rent remains outstanding, the Order of Possession will be effective two days after service of the order on the Tenant.

Although the Agent testified that he cannot be sure that the amounts claimed by the Landlord for outstanding rent are accurate, he did not provide any evidence that the \$3,300.00 in outstanding rent claimed by the Landlord has been paid or any evidence that the \$140.00 was not returned to the Tenant as claimed by the Landlords. In contrast the Landlords provided a Direct Request Worksheet, and testimony that \$3,300.00 is currently owed by the Tenant for outstanding rent. Based on the documentary evidence and testimony before me, I find that the Landlords have satisfied me on a balance of probabilities that the Tenant owes \$3,300.00 in outstanding rent. As a result, the Landlords are therefore entitled to a Monetary Order in the amount of \$3,300.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$3,300.00. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 23, 2018

Residential Tenancy Branch