



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC
 OPUM-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 cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and a Monetary Order for unpaid rent and the recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the agent for the Landlord (the “Agent”) and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about the service of the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in their Application. At the Request of the Tenant, copies of the decision will be mailed to them at the address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the respondent named in the Tenant's Application is not the Landlord listed on the Tenancy Agreement. One of the parties present on behalf of the Landlord, B.M., testified that he is the owner of the company listed as the Landlord on the tenancy agreement. The other party present for the Landlord, B.R., testified that he is the agent for the Landlord who signed the tenancy agreement with the Tenant. The definition of a landlord under section 1 of the *Act* includes the owner of the rental unit, the owner's agent, or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement. Based on the above, I find that both B.M. and B.R. meet the definition of a landlord under the *Act*. As the Tenant only listed B.R. as the Landlord on the Application, the Application was amended without objection from either party to correctly name both respondents.

Preliminary Matter #2

In the hearing B.R. testified that the Tenant now owes additional rent and utilities for February and March, 2018, and requested permission to amend their Application to include the additional rent and utilities owed and to retain the security deposit paid by the Tenant in partial repayment of these amounts. The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. Section 72 of the *Act* also states that if the director orders a tenant to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. Based on the above, the Application was amended to include the additional rent and utilities claimed by the Landlords and the retention of the security deposit.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 10 Day Notice?

Is the Tenant entitled to an Order cancelling the One Month Notice?

Are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Landlords entitled to a Monetary Order and retention of the security deposit paid by the Tenant for rent owed and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on November 22, 2017, states that the six month fixed-term tenancy began on December 1, 2017, that a security deposit in the amount of \$750.00 was paid, and that rent in the amount of \$1,500.00 is due on the first day of each month. The tenancy agreement does not state that any utilities are included and the addendum to the tenancy agreement, which was signed by the Tenant and the Agent on November 22, 2017, states that \$150.00 is due on the first day of each month for utilities.

The Tenant in this matter is one of two tenants listed on the tenancy agreement and although the parties agree that the tenant took on roommates at some point during the tenancy, the original tenancy agreement was not amended to include the roommates and no new tenancy agreement was signed.

The 10 Day Notice in the documentary evidence before me, dated January 23, 2018, has an effective vacancy date of February 2, 2018, and states that as of January 1, 2018, the Tenant owed \$1,500.00 in outstanding rent and \$150.00 in outstanding utilities. The parties agreed that the 10 Day Notice was personally served on the Tenant on January 23, 2018.

The Tenant testified that on January 1, 2018, at approximately 12:00 PM he placed an envelope containing \$1,100.00 under B.R.'s door and advised his wife through the door that he had done so. The Tenant testified that B.R.'s wife advised him a rent receipt would be issued later that day, but one was never received by him. A text message chain submitted from B.R. shows that the Tenant advised him at 7:52 PM that he placed the envelope under his door earlier that day as he did not want to bother his wife. B.R. testified that he contacted his wife who advised him that she had not seen or heard from the Tenant and that no envelope was slipped under the door. B.R. testified that when he arrived home from work, he verified that there was no envelope containing rent from the Tenant.

Despite the conflict between the parties regarding whether \$1,100.00 was paid towards January rent, the Tenant acknowledged that the remaining \$400.00 in rent was never paid. There was also agreement between the parties that the \$150.00 in utilities was not paid for January and that neither the rent nor the utilities have been paid for February or March, 2018.

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.

Based on the testimony and documentary evidence before me, I find that the Tenant was personally served with the 10 Day Notice on January 23, 2018. As a result, I find that the effective vacancy date of the 10 Day Notice, February 2, 2018, is not correct as is not at least 10 days after the date the Tenant received the 10 Day Notice. Pursuant to section 53 of the *Act*, the incorrect effective date is automatically corrected to

February 3, 2018.

Although two tenants are listed on the tenancy agreement, tenants are jointly and severally liable under the *Act*. As a result, I find that the Tenant was responsible to ensure that the full rent amount of \$1,500.00 was paid to the Landlord on time each month.

Although the parties disputed the amount of rent paid for January 2018, ultimately they both agreed that \$1,500.00 was due for January 2018 and that this amount was never paid in full. 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 corrected effective date of the 10 Day Notice, February 3, 2018. The Tenant's Application is therefore dismissed without leave to reapply and the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed and the parties agree that rent has not been paid for several months, the Order of Possession will be effective two days after service on the Tenant.

Having made the finding that the Tenancy is ended, I will now turn my mind the issue of the amount owed for outstanding rent and utilities. The parties agreed that rent in the amount of \$1,500.00 is due on the first day of each month. The tenancy agreement indicates that utilities are not included in this amount and the addendum signed by the parties at the start of the tenancy states that \$150.00 is due on the first day of each month for utilities. As a result of the above, and in the absence of any evidence to the contrary, I find that \$1,700.00 was due on the first day of each month for rent and utilities.

Although the Tenant stated that they paid \$1,100.00 in rent, they did not submit any corroborative evidence of this payment such as a witness statement or bank records showing the withdrawal. I also find the testimony of the Tenant in the hearing that they held a conversation with B.R.'s wife through the door contradictory with text message from the Tenant in the documentary evidence before me indicating that rent had been slipped under the door to avoid disturbing B.R.'s wife. Based on the above, I do not find the Tenant's testimony that rent in the amount of \$1,100.00 was paid reliable and I therefore find that the Tenant owes \$1,500.00 in rent for January, 2018.

Based on the Tenant's testimony, I also find that the Tenant owes \$450.00 in utilities for January – March, 2018, and \$3,000.00 in rent for February – March, 2018. Pursuant to section 72 of the *Act*, the Landlords are entitled to the recovery of the \$100.00 filing fee and to retain the security deposit paid by the Tenant in partial satisfaction of the above

noted amounts owed. As a result, the Landlords are entitled to a Monetary Order in the amount of \$4,300.00; \$4,500.00 in outstanding rent, \$450.00 in outstanding utilities, \$100.00 for the recovery of the filing fee, less the \$750.00 security deposit.

As I have already found that the Tenancy is ended as a result of the 10 Day Notice, it was not necessary to address the Tenant's Application seeking to cancel the One Month Notice. As a result, I have made no findings of fact or law in relation to the One Month Notice.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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 \$4,300.00. 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 13, 2018

Residential Tenancy Branch