



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made January 18, 2018: CNC; LAT; LRE; MNDC; OLC
Amended January 30, 2018: to add CNR
Amended February 14, 2018: to add CNR

Landlord's Application made February 5, 2018: OPC; OPR; MNR; FF

Introduction

This Hearing was scheduled to consider cross-applications. The Tenant seeks to cancel a Notice to End Tenancy for Cause issued December 18, 2017; to cancel a Notice to End Tenancy for Unpaid Rent issued January 27, 2018; an application to extend the time limit to cancel the Notice to End Tenancy for Unpaid Rent issued February 5, 2018; to cancel a Notice to End Tenancy for Unpaid Rent issued February, 5, 2018; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an order suspending, or setting conditions on, the Landlord's right to access the rental unit; authorization to change the locks to the rental unit; and compensation for damage or loss.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

Both parties attended the Hearing and gave affirmed testimony. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

There were no issues identified with respect to service of documents.

Preliminary Matter:

The Tenant seeks an extension of time in order to make his application to dispute the 10 Day Notice to End Tenancy for Unpaid rent issued February 5, 2018 (the "Third Notice").

The Tenant stated that he has not paid rent for January, February or March, 2018, because he "got scammed for \$1700.00 and I owe the bank money". He acknowledged that he received the Third Notice, but could not recall the date that he received it. He stated that it was posted to his door.

The Tenant did not provide any reason for not making his Application to cancel the Third Notice until February 14, 2018.

Section 46(4) of the Act requires a tenant to pay the outstanding rent or dispute a Notice to End Tenancy for Unpaid Rent within 5 days of being served with the notice.

In this case, I find that the Tenant was deemed to be served with the Third Notice three days after the Landlord posted it to his door on February 5, 2018. Therefore, I find that the Tenant received the Third Notice on February 8, 2018, and had until February 13, 2018, to dispute the Third Notice. The Tenant did not dispute the Third Notice until February 14, 2018.

Section 66 of the Act provides that a time limit established by this Act may be extended only in exceptional circumstances. In this case, the tenant provided insufficient evidence that there were exceptional circumstances which caused him to dispute the Third Notice after the legislated time limit.

Therefore, the Tenant's application for an extension of time to dispute the Third Notice is dismissed and his application to cancel the Third Notice will not be heard.

Rule 6.2 of the Rules of procedure provides the following:

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I find that the remainder of the Tenant's application for compensation is not sufficiently related to his application for an extension of time. Therefore, the Tenant's application

for compensation is dismissed with leave to reapply. The remainder of his application is dismissed without leave to reapply, as the tenancy is ending for the reasons outlined below.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and Monetary Award for unpaid rent?

Background and Evidence

Monthly rent is \$650.00, due on the first day of each month. The Tenant has not paid any rent for January, February or March, 2018.

Analysis

Section 46(5) of the Act provides that if a tenant does not dispute the notice, or pay the outstanding rent, within 5 days of receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I find that the Third Notice is effective January 18, 2018, and that the Tenant is overholding.

Pursuant to the provisions of Section 55 of the Act, I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant. I further find that the Landlord is entitled to a monetary award for unpaid rent for January and February, 2018, and loss of revenue for the month of March, 2018, in the total amount of \$1,950.00 (\$650.00 x 3 months.)

The Landlord's Application had merit and I find that he is entitled to recover the \$100.00 filing fee from the Tenant.

The tenancy has ended pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent issued February 5, 2018. Therefore, there is no need to consider the One Month Notice to End Tenancy for Cause which was issued on December 18, 2017, or the other 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 27, 2018.

The Landlord is hereby provided with a Monetary Order in the amount of \$2,050.00 comprised of unpaid rent, loss of revenue, and recovery of the filing fee.

Conclusion

The Tenant's application for monetary compensation 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 provided with a Monetary Order in the amount of \$2,050.00 for service upon the Tenant. If the Landlord is holding a security deposit, that deposit may be applied towards the Monetary Order. The Monetary 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: March 16, 2018

Residential Tenancy Branch