

DECISION

Dispute Codes

Tenant CNR, ERP, MNDC, RR, FF
Landlord OPR, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and if successful; for compensation for loss or damage under the Act, regulations and tenancy agreement, for the Landlord to do emergency repairs to the unit, site or property, for a rent reduction and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on March 5, 2018, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by dropping the hearing package into a drop box in the Landlord's office. The Landlord said they did not receive the Tenant's hearing package. Dropping the hearing package into a drop box is not in accordance with section 89 of the Act. I find the Tenant did not serve the Landlord in accordance with section 89 of the Act.

At the start of the conference call the Arbitrator informed the Parties that the hearing will be focused on only the 10 Day Notice to End Tenancy dated January 30, 2018. The other issues in the Tenant's application for emergency repairs, for compensation for loss or damage under the Act, regulations or tenancy agreement and for a rent reduction are separate issues to the tenancy continuing or not. The Landlord's monetary claim is also a separate issue. Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says an Arbitrator may dismiss unrelated disputes within a single application. I find the hearing will deal with the Notice to End Tenancy only and the Tenant and Landlord are at leave to reapply for the other monetary claims. The Tenants' applications to recover the costs of emergency repairs, for compensation for loss or damage under the Act, regulations or tenancy agreement and for a rent reduction are dismissed with leave to reapply. The Landlord's monetary claim is dismissed with leave to reapply.

Issues(s) to be Decided

Residential Tenancy Branch
Office of Housing and Construction Standards

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on November 1, 2016 as a one-year fixed term tenancy with an expiry dated of October 31, 2017 and then the tenancy continued on a month to month basis. Rent is \$2,540.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,225.00 and a cleaning deposit of \$450.00 at the start of the tenancy.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 30, 2018 by posting it on the Tenant's door on January 30, 2018. The Effective Vacancy date on the Notice was February 9, 2018. The Landlord said they want to end the Tenancy because the Tenant has not paid the rent for January, February, March and April 2018 in the total amount of $\$2540.00 \times 4 = \$10,160.00$.

The Tenant said he agrees he has not paid the rent for January through to April 2018, but he said the Landlord changed the locks and he can not access the rental unit. The Tenant said this not right and it is one of the reasons he has not paid the rent. The Tenant continued to say the unit has some repair issues which the Landlord has not fixed and that is the other reason he has not paid the rent.

The Landlord said she did change the locks on the unit, but the Tenant could have come to her and paid the rent and got the new key/fob. The Landlord continued to say the Tenant has had too many people living in the unit and the Landlord had to have entry to the unit to make repairs.

Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated January 30, 2018 stands in full effect. I grant the Landlord an Order of Possession with an effective vacancy date of April 15, 2018.

Further a Landlord cannot change the locks on a rental unit and deny a tenant access to the unit while a tenancy agreement is in place. Consequently, I grant the Tenant an Order of

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Possession effective from April 3, 2018 to April 15, 2018. I Order the Landlord to give the Tenant full access to the rental unit immediately.

As both parties have only been partially successful I order both parties to bear the cost of the filing fees which have already been paid.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective April 15, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

An Order of Possession effective from April 3, 2018 to April 15, 2018 has been issued to the Tenant. A copy of the Order must be served on the Landlord in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: April 3, 2018

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