



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV LAL VISTA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR FFL
For the tenant: CNR OLC ERP RP PSF LRE LAT AS

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018 (“10 Day Notice”), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the landlord’s right to enter the rental unit, for emergency repairs for health or safety reasons, for regular repairs to the unit, site or property, for authorization to change the locks to the rental unit, for authorization to sublet the rental unit, and for an order directing the landlord to provide services or facilities required by law or the tenancy agreement.

An agent for the landlord (“agent”), a building manager for the landlord (“building manager”), the tenant and a support person for the tenant, attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Both parties confirmed having received the application and documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

In addition to the above, the agent testified that in addition to the rent owed of \$2,550.00 listed on the application the tenant has subsequently not paid the rent for April and May of 2018 and that as of the date of the hearing the tenant owes a total of \$4,200.00 in unpaid rent or loss of rent. As a result, the agent requested to amend the application to include rent owing and loss of rent up to May 2018 as the hearing was on May 23, 2018. The tenant also confirmed that she continues to occupy the rental unit. I find the agent's request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to \$4,200.00 as requested pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Should the 10 Day Notice be cancelled or upheld under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?
- If the tenancy is ending, should the remainder of the tenant's application be dismissed without leave to reapply as being moot?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a fixed term tenancy began on October 1, 2016 and that \$825.00 in rent is due on the first day of each month. The tenant paid a security deposit of \$412.50 which the landlord continues to hold. The agent requested authorization to retain the security deposit to offset the rent owed under the *Act*.

The agent testified that as of May 23, 2018 which was the date of the hearing, the tenant owes \$4,200.00 in unpaid rent and loss of rent dating back to 2017 and that the amount includes no rent paid for the months of February to May 2018 inclusive. The tenant confirmed that she did not pay rent as claimed.

The tenant referred to the previous file number which has been included on the cover page of this decision for ease of reference. The tenant alleged that she had an order authorizing her to withhold rent which is not the case. The previous decision gave her leave to reapply when neither party attended the reconvened hearing; and as a result, I find the tenant has failed to submit any supporting documentary evidence of an order authorizing her to withhold any amount of rent.

The tenant filed her application to cancel the 10 Day Notice on March 8, 2018 although she confirmed she received the 10 Day Notice on March 2, 2018 on her door and that the 10 Day Notice was dated March 2, 2018. The effective vacancy date listed on the 10 Day Notice was March 16, 2018 which has passed. As the tenant continues to occupy the rental unit the landlord is seeking an order of possession as soon as possible.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, I find that the tenant's testimony to be inconsistent and unreliable. The tenant claimed to have authorization to withhold rent which is not the case and is not supported by the decision referred to above, the file number of which has been included on the cover page of this decision. In addition, I find the tenant filed outside of the five day timeline provided for under section 46 of the *Act*. Therefore, I find the tenant is conclusively presumed under the *Act* to have accepted the effective vacancy date of March 16, 2018. Based on the above, I dismiss the tenant's application to cancel the 10 Day Notice and I find the tenancy ended on March 16, 2018 as that was the effective vacancy date listed on the 10 Day Notice. I find the 10 Day Notice is valid and is upheld. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

Unpaid rent – Based on the above, I find the tenant has breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) 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.

[My emphasis added]

I accept the agent's testimony that the tenant owes a total of **\$4,200.00** in unpaid rent and loss of rent. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I dismiss the tenant's entire application without leave to reapply due to insufficient evidence. I find the remainder of the tenant's application to be moot as the tenancy ended on March 16, 2018.

Monetary Order – I find the landlord has established a total monetary claim of **\$4,300.00** comprised of \$4,200.00 in rent arrears plus the recovery of the cost of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$412.50 which has accrued no interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,787.50**.

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. I find the tenancy ended on March 16, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The landlord must serve the tenant with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$4,300.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$412.50 which has accrued no interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$3,787.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 23, 2018

Residential Tenancy Branch