



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 612333 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46; and
- an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent and the property owner. The tenant represented herself with the assistance of an advocate.

As both parties were in attendance service was confirmed. The tenant testified that they were served with a 10 Day Notice on March 6, 2018. The landlord testified that they were served with the tenant's application for dispute resolution and evidence on or about March 9, 2018. The landlord said they had not submitted any evidence. Based on the undisputed testimonies of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

This periodic tenancy began in July, 2017. The current monthly amount of rent is \$675.00 payable on the first of each month.

The landlord testified that a 10 Day Notice was issued on March 6, 2018 as the tenant did not pay the full amount of the rent due for March 1, 2018. Neither party submitted a copy of the 10 Day Notice into evidence. The landlord testified that the tenant has been repeatedly late paying rent throughout the course of the tenancy. The landlord said that they had attempted to make accommodations in the past and this was the first Notice to End Tenancy they have issued to the tenant.

The tenant acknowledged that the tenancy is in arrears as at the date of the hearing. The tenant suggested that she would be able to make payments against the arrears and for future rent.

The tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement. Neither party submitted a full copy of the tenancy agreement into evidence. The tenant submitted three non-sequential pages of the tenancy agreement into evidence. The tenant said that the mailboxes for the rental building are broken and Canada Post refuses to provide mail service. The tenant submits that there are no working washing machines and that there was an incident with flooding in the rental unit. The tenant submitted some photographs in support of their application.

The landlord disputes the tenant's testimony and submits that repairs have been undertaken for all of the issues the tenant raised in her submissions. The landlord said that the mailboxes were replaced and repaired in an adequate timeframe with Canada Post making mail available for pickup at the local postal outlet. The landlord testified that while some washing machines are broken there are other functioning machines available. The landlord said that the water damage was dealt with and resolved when reported.

Analysis

In accordance with subsection 46(4) of the Act, the tenants must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they were served with a 10 Day Notice on

March 6, 2018, and filed their application to dispute the notice on March 9, 2018. Accordingly, the tenant complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

The parties testified that the tenancy is in arrears. The tenant testified that she is willing to enter into a payment plan to rectify the rental arrear. I accept the undisputed evidence of the parties that there is an arrears for this tenancy. However, as neither party submitted a copy of the 10 Day Notice into evidence I am unable to make a determination as to whether the 10 Day Notice complies with the form and content requirements of section 52 of the *Act*. Under the circumstances, I find that the landlord has not established the evidentiary basis for a finding that an effective 10 Day Notice in the approved form was issued. Consequently, I allow the tenant's application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the *Act*.

The tenant raised issues with the condition of the rental property. The tenant seeks an order that the landlord comply with the *Act*, regulations or tenancy agreement by performing repairs and providing services and facilities such as secure mail boxes and working laundry machines. I note that the tenant has failed to submit the full tenancy agreement into evidence, nor have they clearly identified a clause in the agreement that they feel the landlord has breached. From their submission it appears that this portion of the tenant's application is in regards to specific facilities and repairs the tenant believes the landlord has not performed adequately or in a timely manner.

I find that the tenant has not provided sufficient evidence in support of their claim for an order that the landlord comply. I find that the tenant's testimony regarding the repairs they require for the rental building to be vague and unconvincing. Furthermore, the tenant confirmed that the landlord has taken action and remedied some of the issues prior to the hearing. The few photographs submitted into evidence by the tenant are not sufficient to conclude that the landlord has failed to comply with the *Act*, regulations or tenancy agreement. I dismiss this portion of the tenant's application.

Conclusion

The tenant's application to cancel the 10 Day Notice of March 6, 2018 is allowed. The Notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenant's application is dismissed without leave to reapply.

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: May 29, 2018

Residential Tenancy Branch