



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNRT, MNRT, OLC, ERP, RP, LRE, RR, FFT

Introduction

The tenant submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 24, 2018 (“10 Day Notice”), for an amended monetary claim of \$13,265.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for emergency repairs for health or safety reasons, for regular repairs to the rental unit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for an order to set limits upon the landlord’s right to enter the rental unit or property, for a rent reduction and to recover the cost of the filing fee.

The tenant, a witness for the tenant (“witness”), the landlord and an agent for the landlord (“agent”) attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided; however, I have only referred to the relevant evidence below.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties 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 I have corrected the rental unit address to the correct name of the crescent of the rental unit as the tenant made a typographical error in his application by misspelling the rental unit address. This correction was made as an amendment to the tenant's application in accordance with section 64(3) of the *Act*.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure ("rules") authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to set aside the 10 Day Notice and was the reason the tenant received an expedited hearing. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and the tenant's application to recover the filing fee at this proceeding. I will determine later in this decision what portions of the remainder of the tenant's application are dismissed with leave to reapply, if any.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the tenant entitled the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenant testified that he received a hand-written 10 Day Notice which the landlord disputed. The tenant testified that while he applied on February 16, 2018 to dispute the hand-written 10 Day Notice, he did not supply a copy of that notice in evidence for my consideration. The tenant testified that he then received a 10 Day Notice dated February 24, 2018 which he claims is the subject of his application to cancel a 10 Day Notice. The parties agreed that the 10 Day Notice is dated February 24, 2018. The tenant claims he could not recall the date he received the 10 Day Notice posted to his door. The parties were advised that the tenant is deemed served three days after the notice is posted pursuant to section 90 of the *Act*.

There is no dispute that the 10 Day Notice indicated that \$1,800.00 was owed in rent as of February 1, 2018. The tenant confirmed that he did not pay rent due to wifi issues and other issues on a “deficiency list” and that he thought that withholding rent was the only way to get the landlord to address the “deficiency list”.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant confirmed under oath that he did not pay February 2018 rent due to “wifi” issues and other issues related to a “deficiency list”. The effective vacancy date on the 10 Day Notice is listed as February 24, 2018 which automatically corrects under section 53 of the *Act* to March 9, 2018 as the 10 Day Notice was deemed served February 27, 2018.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due.

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]

I dismiss the tenant's application to cancel the 10 Day Notice as the tenant has confirmed that rent was not paid when it was due as required by section 26 of the *Act*. I

have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act* and as a result, **I grant** the landlord an order of possession effective two (2) days after it is served on the tenant. I find the tenancy ended on March 9, 2018 which is the corrected effective date of the 10 Day Notice.

I do not grant the tenant the recovery of the cost of the filing fee as the tenant's application to cancel the 10 Day Notice has been dismissed without leave to reapply.

As the tenancy has ended, I only grant the tenant leave to reapply for monetary compensation which was severed above pursuant to Rule 2.3 of the rules. The remainder of the tenant's application is dismissed without leave to reapply as I find the remainder to be moot as the tenancy has ended.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court. I find the tenancy ended March 9, 2018.

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 3, 2018

Residential Tenancy Branch