



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OLC

Introduction

On February 27, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the Act.

At the start of the hearing, I confirmed that the Landlord attended the hearing, and that A.A. attended the hearing and advised that he was the representative for the Landlord. The Tenant attended the hearing on her own behalf. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that that complies with the *Act*.

During the hearing, A.A. drew my attention to an Application (the file number is on the cover page of this decision for ease of reference) that was made with respect to a claim for compensation for outstanding rent owed. He had hoped that this Application would be heard as a cross-application to this Tenant’s Application. However, as discussed during the hearing, the Application made by the Landlord did not meet the requirements

of Rule 2.11 of the Rules of Procedure, as it was filed too close to this hearing to be joined. As such, the Landlord was advised that the monetary matters would be addressed at the future hearing.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act* should the Tenant be unsuccessful in seeking to cancel the Notice?

Background and Evidence

The Landlord stated that the tenancy started on May 1, 2003 as a fixed term for one year and then converted to a month to month tenancy afterwards. Rent was established at \$950.00 per month, due on the first of each month, but was subsequently increased over the years. As of June 1, 2015, rent was \$1,200.00 per month. A security deposit of \$475.00 was also paid. The Tenant confirmed these details.

The Landlord confirmed that the Notice was served by hand to the Tenant on February 24, indicating that \$3,250.00 was outstanding, and the Tenant confirmed receipt of the Notice.

The Tenant, in turn, disputed the Notice by making her Application on February 27, 2018. The Tenant acknowledged that rent was in arrears and she stated that she had a “loose” relationship with the Landlord. She referenced an email submitted into evidence where she alleges that the Landlord kept a running tally and allowed her to pay rent in installments. However, the Landlord refuted this and upon further discussion, the Tenant admitted that she understood that this was not an agreement altering the term requiring rent to be paid on the first of each month, as per the tenancy agreement.

The Landlord stated that as of the service of the Notice, rent for December 2017, January 2018, and February 2018 were outstanding; however, the Tenant paid \$400 on February 2, 2018 and \$100 on February 17, 2018. The Tenant agreed with these amounts and acknowledged that rent was still outstanding.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 26 of the Act states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the notice. If the Tenant does not do either, the Notice is conclusively presumed to be accepted, the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 55 of the Act allows the Landlord to be granted an Order of Possession should the Tenant's Application be dismissed and the Notice complies with the Act.

During the hearing, the Tenant acknowledged that she had been in arrears and not paying the rent, as she had encountered personal difficulties. Furthermore, she described living situations that she felt entitled her to withhold the rent and stated that she was unhappy with A.A. yelling at her with respect to the outstanding rent. However, she also acknowledged that none of the reasons she withheld the rent fell within the allowable grounds pursuant to the Act.

As the undisputed evidence is that the rent was not paid in full when it was due, and that the Tenant did not meet any of the applicable criteria that authorized her to withhold the rent under the Act, I dismiss the Tenant's Application. I find that the Landlord's Notice is valid and therefore, the Landlord is entitled to an Order of Possession.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: May 8, 2018

Residential Tenancy Branch