



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL
 CNR, ERP, FFT

Introduction

This is an Application for Dispute Resolution brought by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent, an Order for Emergency Repairs and reimbursement of the filing fee.

There is also a cross-application brought by the Landlords requesting an Order of Possession pursuant to the 10-Day Notice to End Tenancy dated March 17, 2018 for Unpaid Rent; the Landlords also request a monetary order for unpaid rent and payment of the filing fee.

The Landlords appeared for the scheduled hearing; their witness, GA, was also present as he was their local agent for several of the years of the tenancy. The Tenant was present, along with a witness for her claim, DM. I find that the respective notices of hearing were properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Residential Tenancy Act ("Act")?

If not, are the Landlords entitled to an Order of Possession, pursuant to section 55 of the Act?

Are the Landlords entitled to a Monetary Order for unpaid rent, pursuant to Section 67 of the Act?

If the Notice is cancelled and the tenancy continues, is the Tenant entitled to an Order requiring the Landlords to make emergency repairs, pursuant to section 33 of the Act?

Is either party entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began around 2008, although neither party was able to produce a copy of the written agreement; the Landlords contend that they tried to have a new agreement signed in 2016, but the Tenant declined. The monthly rent amount was \$1,200.00, although the Tenant fell into financial difficulty and the witness, GA, states that he negotiated a reduction in the rent to \$1000.00 a month; he states it was only intended for the winter months to subsidize heating costs, but the Tenant claims it was discounted permanently. The Landlords took over the collection of rent payments about two years ago when GA left the local area and moved out of province, where the Landlords also reside. The Landlords admit that only \$1,000.00 was paid and collected, and that they felt the discounted rent was fair given the Tenant's circumstances.

The Landlords presented a table showing rent paid and owing; the claim is that \$8,000.00 is currently in arrears as of June 1, 2018. There was also testimony that natural gas bills have been unpaid by the Tenant, but this matter is not before me at this time. The Tenant agrees that she owes rent, but claims it is for the following amounts:

Oct 2016 - \$1,000.00
August 2017 - \$1,000.00
Sept 2017 - \$500.00
April 2018 - \$1,000.00
May 2018 - \$1,000.00 (which she states she has available now)

As a result of the non-payment of rent, the Landlords served a 10-Day Notice to End Tenancy dated March 12, 2018 with an effective vacancy date of March 27, 2018 due to outstanding rent in the amount of \$7,000.00 which was served on March 17th by posting it on the Tenant's door; a proof of service form was submitted into evidence and the witness was present to confirm that he was there, although he signed on the incorrect signature line on the form. The Tenant received the notice on March 17, 2018 and filed a dispute on March 20th, along with claims of emergency repairs that were required. The Tenant claims that the unpaid rent was never an issue with the Landlords and that they are simply evicting her because they want to sell the house.

The Landlords claim that they have given this Tenant many opportunities to keep up with the rent, but the \$8,000.00 in arrears warranted an end to the tenancy. In addition, there were

issues with the boiler in February which the Landlords claim the Tenant failed to bring to their attention in a timely manner; that boiler is the subject of a claim by the Tenant for emergency repairs, filed March 20, 2018. The Landlords claim they tried to attend at the house to look at the boiler but were driven away by the Tenant and her dogs. They require possession not only due to rent arrears but to address any repairs that need to be done, which they claim to be a separate issue from the desire to sell the property.

Analysis

The initial issue of whether or not the Notice to End Tenancy is valid and binding must be determined before it will be necessary to consider a claim by the Tenant for emergency repairs.

The obligation of a tenant to pay the rent in a timely manner is found in section 26 of the Act:

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.*

I find that the parties initially agreed in writing to rent of \$1,200.00 but that this was verbally reduced to \$1,000.00 per month, payable on the 1st day of each month. I make no finding with respect to the reasons provided by the parties as to why that reduction was made; I simply accept that the agreed-upon rent amount was \$1,000.00 for the purposes of this Application. The evidence regarding the quantum of rent arrears appears to be in dispute, the Landlords claiming it to be \$8,000.00 including June, while the Tenant only admits to \$4,500.00 to the end of May, 2018. Nevertheless, there is no doubt that the rent is in arrears and that the Landlords were entitled to serve notice to end the tenancy on those grounds.

A landlord may serve notice to end tenancy under section 46 of the Act, if a tenant falls behind in rent:

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I have reviewed the Notice and find that it meets the form and content required under section 52. I find that it was properly served by posting it on the doors of the rental premises on March 17th. The Tenant did not pay up the arrears owing for back rent within the five days required under the Act. Accordingly, the Landlords have met the burden of proof and I am satisfied that they are entitled to an Order of Possession. The Tenant's application to cancel the notice is hereby dismissed.

As the tenancy has been terminated pursuant to the Act, the issue of emergency repairs is moot and will not be considered by me. The Tenant's Application for emergency repairs is hereby dismissed.

With respect to the outstanding rent, the parties dispute the amount owing, with the Landlords claiming it is \$8,000.00 and the Tenant claiming it is \$4,500.00. I have reviewed the schedule filed and considered the explanations given during the testimony. As the Tenant has failed to produce receipts to verify payments for the additional months claimed, I am satisfied that the Landlords have proven their claim of \$8,000.00 in rent arrears; as the Landlords were successful, I am awarding the \$100.00 filing fee.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlords' copy of this Decision.

Conclusion

For the reasons set out above, the Tenant's Application is hereby dismissed without leave to re-apply.

I hereby grant an Order of Possession in favour of the Landlords effective two days after service upon the Tenant. This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply with it.

The Tenant shall pay the sum of \$8,100.00 forthwith to the Landlords.

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: June 08, 2018

Residential Tenancy Branch