



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LAT LRE MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 9, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 5, 2018 (the "10 Day Notice");
- an order authorizing the Tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- a monetary order for money owed or compensation for damage or loss.

The Tenant attended the hearing on her own behalf and was accompanied by a witness, J.H. The Landlord attended the hearing on her own behalf and was supported by K.L., who did not participate in the hearing. The Tenant, Landlord, and J.H. provided affirmed testimony.

The Tenant testified the Application package was served on the Landlord at her address. The Landlord acknowledged receipt. The Landlord testified the documentary evidence upon which she intended to rely was served on the Tenant in person roughly 1-1/2 weeks before the hearing. The Tenant acknowledged receipt and advised she had an opportunity to review and consider it. No further issues were raised during the hearing with respect to service and receipt of the notice of dispute resolution hearing or of the evidence upon which each of the parties intended to rely. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions. I have reviewed all oral and written 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.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the 10 Day Notice. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issue to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

The agreement between the parties was not reduced to writing. However, the parties confirmed the tenancy began on or about October 1, 2017. Rent in the amount of \$570.00 per month is due on the first day of each month. The Tenant did not pay a security deposit.

The Landlord wished to end the tenancy on the basis of unpaid rent. Accordingly, the Landlord issued the 10 Day Notice. Although a notation on the 10 Day Notice indicates it was served on the Tenant in person on April 5, 2018, the Application confirms receipt on April 6, 2018. In any event, rent in the amount of \$1,980.00 was outstanding at the time of service of the 10 Day Notice. In support, the Landlord referred me to photographic images of cheques, dated January 1 and February 1, 2018, which she testified were dishonoured.

In addition, the Landlord testified that rent was not paid when due on May 1 and June 1, 2018, and that rent in the amount of \$3,120.00 is currently outstanding.

Although the Tenant acknowledged rent was not paid when due on June 1, 2018, she testified it was because the Landlord would not accept it.

In addition, J.H. testified that he witnessed the Tenant pay a total of \$700.00 to P., the Landlord's grandson, in April 2018. The Landlord acknowledged receipt of \$300.00 but testified the remaining \$400.00 was due to P. because of work he completed at a rental property to which the Tenant had intended to move.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

I find the 10 Day Notice was served on and received by the Tenant on April 6, 2018. Further, although there is insufficient evidence before me to determine the amount of rent outstanding, the undisputed testimony of both parties is that rent was not paid when due on June 1, 2018. I do not accept the Tenant's testimony that the Landlord refused to accept payment.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had any right under the *Act* to deduct rent, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

Subject to the exercise of my discretion under Rule of Procedure 2.3, described above, I find that the Tenant's Application is dismissed, without leave to reapply. By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: June 13, 2018

Residential Tenancy Branch