



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC LRE OLC MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 9, 2018, as amended on May 11, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 2, 2018 (the "10 Day Notice");
- an order cancelling a One Month Notice to End Tenancy for Cause, dated April 27, 2018 (the "One Month Notice");
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing on his own behalf. Both parties provided affirmed testimony.

The Tenant testified the Application package and an amendment were served on the Landlord by registered mail. The Landlord acknowledged receipt of these documents. Pursuant to section 71 of the Act, I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail on June 8, 2018. The Tenant testified she received notice that the package was available on June 11, 2018, but did not pick it up until June 14, 2018. Pursuant to section 71 of the Act, I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 issues 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 and to cancel the One Month Notice. The Tenant has leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on June 1, 2017. Rent in the amount of \$2,000.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,000.00, which the Landlord holds.

The Landlord testified that rent was not paid when due on May 1, 2018. Although he received \$1,000.00, the balance remains outstanding. Accordingly, the Landlord served the 10 Day Notice on the Tenant on May 2, 2018. During the hearing, the Landlord testified the 10 Day Notice was served on the Tenant by posting a copy to the door of the rental property. A notation on the 10 Day Notice indicates it was served by regular mail. In any event, the Tenant confirmed receipt of the 10 Day Notice on May 7, 2018.

Further, the Landlord testified that the Tenant did not pay rent when due on June 1, 2018, and that \$3,000.00 is currently outstanding.

In reply, the Tenant confirmed rent has not been paid as claimed by the Landlord. She testified rent has not been paid pending the outcome of the current dispute.

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 received by the Tenant on May 7, 2018. Further, the undisputed testimony of both parties is that rent was not paid when due on May 1 and June 1, 2018, and that \$3,000.00 is currently outstanding. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of 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.

In light of my finding that the tenancy is ending on the basis of unpaid rent, I find it has not been necessary for me to consider the Tenant's request for an order cancelling the One Month Notice.

Conclusion

The Tenant's Application to cancel the 10 Day Notice and the One Month Notice is dismissed, without leave to reapply. As noted above, the Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

By operation of section 55(1) of the *Act*, the Landlord is entitled to 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 21, 2018

Residential Tenancy Branch