



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP PSF RP RR MNDC CNR CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 28, 2018, as amended on May 30 and June 6, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order requiring the Landlord to make emergency repairs for health or safety reasons;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order that the Landlord make repairs to the unit, site or property;
- an order reducing rent for repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 5, 2018 (the "10 Day Notice");
- an order cancelling a One Month Notice to End Tenancy for Cause, dated May 28, 2018 (the "One Month Notice").

The Tenant and the Landlord each attended the hearing and provided affirmed testimony.

The Tenant testified that Landlord was served with the Application package, subsequent amendments and evidence at the Landlord's residence. The Landlord acknowledged receipt. The Landlord testified the evidence upon which he intended to rely was served on the Tenant in person. The Tenant acknowledged receipt. Both parties were in attendance and were prepared to proceed. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer

me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the 10 Day Notice and the One Month Notice. The Tenant has leave to reapply for the remainder of the relief sought, 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 confirmed the tenancy began on April 14, 2015. Currently, 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 or a pet damage deposit.

In support of the 10 Day Notice, the Landlord testified the Tenant has made excuses for the late payment and non-payment of rent throughout the tenancy. The Landlord testified the Tenant made only partial payments of rent on January 3, January 31, February 28, and May 2, 2018. Accordingly, the Landlord issued the 10 Day Notice. The parties confirmed the 10 Day Notice was served on and received by the Tenant on June 5, 2018. At that time, rent in the amount of \$1,900.00 was outstanding. This calculation was supported by a hand-written ledger submitted with the Landlord's documentary evidence.

In addition, the Landlord testified the Tenant has not paid rent in full since the 10 Day Notice was issued. Specifically, the Tenant did not pay rent when due on June 1 and July 1, 2018. The Tenant has, however, made partial payments of \$400.00 and \$350.00. As of the date of this hearing, rent in the amount of \$2,290.00 remains unpaid.

In reply, the Tenant agreed rent has not been paid as alleged but advised she withheld rent because she was “ticked off”. Specifically, she testified the Landlord has not addressed her concerns about insulation. The Landlord responded by testifying there was a previous agreement whereby the Tenant would replace insulation with the funds withheld from rent in January 2018. The Tenant also testified there is an issue with rodents that has not been addressed but did not elaborate upon this further.

At the end of the hearing, each party was given the opportunity to provide further evidence and make additional submissions.

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 June 5, 2018. Further, the undisputed testimony of both parties is that rent has not been paid in full and when due since January 1, 2018, and that rent in the amount of \$2,290.00 remains outstanding.

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 to cancel the 10 Day Notice 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(1) 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 the above, it has not been necessary for me to consider the Tenant's request for an order cancelling the One Month Notice.

Conclusion

Pursuant to section 55(1) 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: July 17, 2018

Residential Tenancy Branch