



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed that she was served with the 10 Day Notice on June 2, 2018, which was posted on her door. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on June 5, 2018.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This month-to-month tenancy began on February 1, 2003, with monthly rent currently set at \$930.00, payable on the first of the month. The landlord collected a security deposit of \$382.50, and still holds that deposit. The tenant still resides at the rental unit.

The landlord provided undisputed testimony in the hearing that the tenant owed rent in the amount of \$1,161.00 for the months of September, October, and November 2017 for a total of \$3,483.00 in outstanding rent. The tenant testified that she was unable to make this payment in full, and required more time to pay. The landlord indicated that she wished to have the security deposit dealt with at the end of the tenancy in accordance with the *Act* and tenancy agreement.

Analysis

I have considered the sworn testimony of the tenant and her witnesses as the landlord did not attend this hearing. The tenant did not deny that she did not pay the outstanding rent to the landlord as she was withholding the rent for repairs that she had requested from the landlord. The tenant testified that she had paid \$330.00 out of her own money to repair the furnace, and that there were numerous items that required the attention of the landlord, but were ignored.

Section 26(1) of the *Act* requires the tenant to pay rent when 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".

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system...

(v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, the tenant's leaking roof and broken furnace may be considered emergency repairs. Sections 33(5)(b) and 33(6)(b) require the tenant to

provide a written account of the emergency repairs accompanied by a receipt for the amount claimed. The tenant did not provide any testimony or any supporting evidence such as receipts to demonstrate that she had complied with these sections. Accordingly, I find that she did not have the right to deduct any rent for any repairs, nor am I able to find that the tenant is entitled to an order requiring the landlord to reimburse the tenant for the \$330.00 for furnace repairs.

The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end, the tenant has only confirmed that the rent has not been paid to the landlord. I found that the tenant does not have the right *under the Act* to deduct or withhold rent. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. Effectively, as of February 18, 2017, the corrected effective date of the 10 day Notice, the tenancy has come to an end.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice is valid and complies with section 52 of the *Act*, and I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

The tenant provided undisputed, sworn testimony that the landlord had terminated the electricity services to the rental unit on February 22, 2017, after the tenant had filed for dispute resolution hearing. The tenant has been without electricity since that date. She further testified that the landlord had tried to prevent her from accessing electricity through alternative means, although electricity was an included utility in the tenancy agreement. Section 27(1) of the *Act*, states that a " landlord must not terminate or restrict a service or facility if: (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement." I accept the testimony of the tenant and her

witnesses, and I find that the landlord failed to comply with Section 27 of the Act. Sections 65 and 67 of the *Act* allow me to issue a monetary award to the tenant if I determine that there has been “a reduction in the value of a tenancy agreement.” The tenant has been without electricity for almost one month, and accordingly I grant the tenant a \$630.00 Monetary Order, which is equivalent to her monthly rent. The tenant also made a monetary claim in the amount of \$200.00 for her spoiled groceries. No monetary worksheet was submitted, nor did the tenant provide any receipts. In the absence of these two items I find I must dismiss this portion of the tenant’s monetary claim.

As this tenancy has come to an end on February 18, 2017, I dismiss the remainder of the tenant’s application for repairs and a reduction in rent.

Conclusion

I dismiss the tenant’s application to cancel the landlord’s 10 Day Notice. I find that the landlord’s 1 Month Notice is valid and effective as of February 18, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant 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: July 26, 2018

Residential Tenancy Branch