



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an order restricting or setting conditions on the Landlord’s right to enter the rental unit, a Monetary Order and an order for the Landlord to comply with the Act, regulation or tenancy agreement.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and the agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenant argued that the Respondent is not the Landlord as they are an agent for the owner and do not own the property themselves. I advised the parties that section 1 of the *Act* includes in the definition of a Landlord the owner, their agent, or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement. Pursuant to section 1 of the *Act*, I find that the Agent, who is the Respondent, therefore meets the definition of a Landlord pursuant to section 1 of the *Act*.

Preliminary Matter #2

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claim relates to the continuation of the tenancy and the payment of rent. As the monetary and other claims by the Tenant are unrelated to the 10 Day Notice, I therefore exercise my discretion to dismiss the Tenant's remaining claims for an order restricting or setting conditions on the Landlord's right to enter the rental unit, a Monetary Order and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement. with leave to reapply.

Preliminary Matter #3

Although the Landlord and Agent acknowledged receiving the Tenant's documentary Evidence, the Tenant denied having received any evidence from the Landlord. The Landlord and Agent testified that their documentary evidence was sent to the Tenant at the rental unit by registered mail on July 17, 2018. In support of this testimony the Landlord and Agent provided me with the registered mail tracking number and a tracking confirmation sheet from the mail service provider indicating that the registered mail had been sent as described above.

The Landlord and Agent testified that to their knowledge, the Tenant has yet to pick up the registered mail. The Tenant testified that she has not received any notice of registered mail and stated that there is only one mailbox for her unit and the unit upstairs and as a result, she does not always get her mail.

In reviewing the tracking information provided from the Landlord and Agent, I note that registered mail address sticker specifically states that the Tenant resides in the basement. Further to this, the mail service provider's tracking website confirms that two notices were left for the Tenant regarding the registered mail; one on July 18, 2018, and one on July 23, 2018. Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision and that parties wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received.

I do not find the Tenant's testimony that she did not receive notice of the registered mail overrides the documentary evidence from the mail service provider that the registered mail was sent to her at the rental address and that two separate notices were left on July 18 and 23, 2018. As a result, I am not satisfied by the Tenant that she did not have a fair opportunity to be notified of the registered mail or to collect and review it prior to the hearing.

Section 90 of the *Act* states that documents sent by registered mail are considered received five days after they are sent, unless earlier received. As a result, I find that the Tenant was deemed served with the Landlord's evidence on July 23, 2018, five days after it was sent by registered mail, regardless of the fact that the Tenant never picked it up. As a result, I accept the Landlord's documentary evidence for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant is unsuccessful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The one year fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began February 15, 2018, and that rent in the amount of \$1,500.00 is due on the first day of each month. In the hearing the parties agreed that these are the correct terms of the tenancy agreement.

The Landlord and Agent testified that the Tenant has had difficulty paying rent since the start of the tenancy. Specifically they stated that the Tenant's rent cheques for February and March bounced, that only \$750.00 in rent was paid for May and that no rent has been paid for June or July. As a result, the Landlord stated that a 10 Day Notice was posted to the door of the Tenant's rental unit on June 5, 2018.

The 10 Day Notice in the documentary evidence before me, dated June 5, 2018, has an effective vacancy date of June 16, 2018, and states that as of June 1, 2018, the Tenant owed \$1,500.00 in outstanding rent.

The Tenant acknowledged receiving the 10 Day Notice from the door of her rental unit on June 6, 2018, but disputed the testimony provided by the Landlord and Agent. The Tenant denied paying any of her rent by cheque and stated that it was all paid by cash and that the Landlord never issued any receipts. The Tenant stated that she paid the \$1,500.00 in rent for June on June 5th, 2018, but acknowledged that she has no proof of this payment as it was made in cash. When I asked the Tenant if she had bank records showing the withdrawal or withdrawal receipts from an ATM, she stated that she did not as she was forced to close her bank account due to the theft of several cheques and that her rental unit had been broken into so she had no records. Although the Tenant stated that she provided a police file number for my consideration, it was not in the documentary evidence before me for review. Both parties also acknowledged that rent for July has yet to be paid.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on June 6, 2018, the day she acknowledged receiving it.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, 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 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of 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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (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.

Although both parties provided contradictory testimony about whether rent has been paid for June, ultimately they both agreed that rent for July has not been paid. While the Tenant testified that she paid the \$1,500.00 in rent owed for June on June 5, 2018, the Landlord testified that the Tenant has consistently had difficulty paying the rent on time and in full since the start of the tenancy and that rent for both June and July of 2018 remain outstanding. Although the Tenant testified that she paid her rent, she acknowledged that she does not have any proof of this payment. Further to this, I find her testimony regarding why she is unable to provide any proof of the cash withdrawals for rent inconsistent with common sense and ordinary human experience. In addition, I note that the proof of income submitted by the Tenant in order to obtain a fee waiver from the Residential Tenancy Branch (the "Branch") for this hearing, shows that she receives less money per month in income than the total amount of rent

payable. As a result, I prefer the testimony of the Landlord and the Agent that rent for June remains outstanding. As a result, I dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to reapply.

Having made the above finding, I must now turn my mind to whether the 10 Day Notice complies with section 52 of the *Act*. As the 10 Day notice is signed and dated, contains the address for the rental unit and the reason for ending the tenancy, the effective date of the notice and is in the approved form, I find that it complies with section 52 of the *Act*. Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed, and both parties agree that rent for July has not been paid, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 30, 2018

Residential Tenancy Branch